he ustralian ommonwealth Bill . . . .

Essays
and
Addresses
By . . .
H. B. Higgins

With the authors' compliments

ESSAYS AND ADDRESSES

ON

THE AUSTRALIAN COMMONWEALTH BILL

BY

HENRY BOURNES HIGGINS.

One of the Victorian Members of the Australasian Federal Convention, 1897-1898.

Member of the Legislative Assembly of Victoria.

Melbourne:
THE ATLAS PRESS, Block Place.
1900.

PREFACE.

IT has been suggested to me that it would be well to put into book form such as I could collect of the articles which I wrote, and of the addresses which I delivered, in relation to the question of accepting or rejecting the Australian Commonwealth Bill. The object is to put on record the principal grounds on which the bill was opposed by so many thousands of voters in Victoria and in New South Wales, and to show the gallant, uphill fight—which was to a great extent successful—for a constitution more flexible, for a Federal Parliament more amenable to the will of the people who are to live under the federal laws. Those who voted against the bill on the first referendum in the face of much ignorant calumny and abuse, can congratulate themselves that to them are due, in a pre-eminent degree, the improvements made at the conference of premiers held in January and February, 1899 ; and especially the improved provision for solving "deadlocks" between the federal houses, and for enabling the voters, by a "dual referendum," to overcome the obstruction of either house when an amendment of the constitution is required. Even more could have been achieved but for a certain pedantic tendency to imitate the United States constitution, in faults as well as in merits, and but for the failure of the political leaders for the time being to apprehend clearly what was wanted, and what the circumstances of the time made it possible for them to obtain.

The addresses which appear in this book were written, but they were not, except in one or two minor instances, read to the audience. They indicate the staple of numerous discourses.

No literary or special merit is claimed. But it is claimed that these essays and addresses bring into prominent relief the essential fallacy of the assumption that constitutions must be rigid—the mistake of those who would guard against possible temporary mistakes of the people by placing mechanical obstructions in the way of adjusting the constitution as experience may dictate, and as the novel conditions which must arise may render expedient. In the course of the years to come, when the people of Australia realise that the Law Courts can sit in judgment on the legislature, and can treat a law as invalid because of its being beyond the powers of the legislature, the fundamental importance of flexibility and plasticity in the written constitution will be even more apparent than it is now.

But that which was a bill has now become an Act, binding as law throughout the Empire. The time for criticism has passed; the time for obedience has come. It is now the duty of all good Australians, whatever were their objections to the bill, to give loyal assistance to the constitution, and to aid in working out to a successful issue the problems of our Australian Commonwealth.

H. B. HIGGINS.

INDEX.

The Federal Convention, consisting of ten members elected by popular vote in each of the colonies of New South Wales, Victoria, South Australia and Tasmania, and of ten members chosen by the Parliament of West Australia, finished its labours at Melbourne on the 16th March, 1898. The following address was delivered at Geelong on April 18, 1898.

The Convention Bill of 1898.

I HAVE called this meeting for the purpose of laying before you, my constituents in Geelong, some thoughts on the Federal bill, which by your goodwill, I have assisted in framing. I have not forgotten—I shall never forget—the very handsome way in which the electors of Geelong indicated their confidence in me on the day of the election for the Convention. Nearly 45,000 electors of Victoria marked me as one of the Victorian ten; and of these votes I had nearly 2000 in Geelong alone. You then put me in a position of great privilege, but of greater responsibility. As a man comparatively new to politics, it was a great privilege to mix with so many of the most distinguished politicians in Australia—men who had the invaluable experience of the working of Constitutional Government in five colonies, and who have—many of them—acted as responsible Ministers of the Crown. I should have been most stupid if I did not learn much that is useful from them, and most ungrateful if I did not acknowledge it. Taken as a whole, the Convention contained as strong men as you could find in Australia.

But I find that for this reason alone many are inclined to vote for this bill without fully considering it. They say that a Constitution which the ablest statesmen in Australia have, with so much labor, assisted in devising, must be the best constitution that can be obtained, and ought to be accepted as of course. That is a mistake. The stronger the men the harder is the tussle; and the harder the tussle, the less is each strong man able to impress his personality on the result. When the Geelong football team meets foemen worthy of its steel, the goals are usually fewer, or more evenly balanced in number. One strong man wins on this point, and another on that; and the result may quite possibly be an inconsistent, incoherent, and ill-digested constitutional scheme.

Perhaps some of you may think that I ought to have spoken sooner. I deliberately abstained from doing so, in order that I might not take any course rashly, fresh from the heat and excitement of the debate. If I had given my views directly after the convention, I should have said unhesitatingly, but with deep pain, "This bill will never do." But I was urged—and I think rightly—to reconsider the bill in quiet, after some interval, and see whether, after all, notwithstanding what seemed to me to be its serious blemishes, I could not recommend that it be adopted. The cost of the convenaion to Victoria in money alone, will be, I suppose, some £10,000 or £12,000; and I should so

much like to be able to recommend the bill—to see some direct fruit of our labours. It is now a month since the bill was completed; and I tell you that during that month my responsibility has been pressing on me like a nightmare. The people of Victoria have last week had the opportunity of reading in the papers what their Premier, Sir George Turner, has to say about the bill; and his utterances, his advice, naturally and properly, command more attention and interest than anything that I can say. Well, I find that after a careful examination of the clauses, he feels himself justified in recommending the bill. But let me warn you that you must take the recommendations of any of the delegates with much caution, with much of the salt of qualification. For we are under a strong temptation to favor the acceptance of a bill on which we have bestowed so much labour. Every workman likes to see some direct result from his work. I never saw such hopeless and vacuous workmen as soldiers undergoing punishment in a barrack yard, who had to carry cannon balls and pile them up in one heap, and then carry them and pile them up in another, and so on from heap to heap. For they laboured and they achieved nothing. Even the mere sense of loyalty, and respect for one's colleagues is a strong incentive to recommend this bill. Then is also the desire, the legitimate ambition, to have one's name go down in our annals as one of the framers of the Federal Constitution for Australia. So it is not by any means remarkable that you find most of the delegates concur in favor of the acceptance of this bill. It was so in connection with the bill of 1891; it will always be so in every such undertaking. But you—the electors—must judge for yourselves—must not forego the duty which you are under, as trustees for posterity, to consider the bill on its own merits. Trustees for posterity—trustees for posterity! We are making for posterity a contract from which they are not to get out.

You have never had so momentous a political question to face before. It is proposed that you shall bind, under an "indissoluble constitution," your children and your children's children for all generations. If you once come under this bill, you and your descendants must stay under it. Marriage is a big, a grave undertaking; but it can at least be dissolved by the death of one of the parties. This constitution cannot be dissolved by the death of any person, or of any number of persons. This is not like an ordinary Act of Parliament which Parliament can change if it do not work well. If the Factories' Act of Victoria be found defective, Parliament can change it. Even the Constitution Act of Victoria, the act under which we make Victorian Laws, can be changed in any clause at the will of the Victorian Parliament. I want to impress this point upon you, because I find some unthinking people saying: "Oh, let us federate; and if the

arrangements do not work, we can put them right." That is a mistake. You cannot rectify an error in the federal constitution as you can rectify an error in the Factories' Act, or in any other Victorian Act. Let me start with this proposition, in order to clear our ideas :—

Not a section, not a phrase, not a word in this constitution can be changed by the Federal Parliament, no matter how urgently the change may be required, and even though every member in each House of the Parliament may vote for the change.

There—you may rely on that and my other propositions as absolutely true. There are some in this audience who do not agree with me in my general politics ; but I feel sure that even they will take my word to-night. Indeed, whatever faults I have, I have never been accused of a want of candour. Let the fact sink deep in your minds. Our Victorian Parliament has power, under an Act of the Imperial Parliament, to change any part of our Victorian constitution. Some parts may be changed by an ordinary majority in both houses ; other parts cannot be changed except by an absolute majority in both houses ; but any part can be changed. Now, we know by experience how hard it is to get a change of our constitution even with these facilities. But the difficulty will be far greater in getting a change in the Federal Constitution. So that it is no wonder if some of us do not throw up our hats in the air at once, and shout for this bill, as the crowd shouts for a goal at a football match. It is no wonder that some of us do not come before you with oratorical effusions about the glories of union among Australians, and the narrowness and pettiness of those who venture to criticise this bill. Oratory is an excellent thing in a good cause; but we must steel ourselves against its seductive power in a matter which needs so much deliberatiou in the interests of our common country. Here is my next proposition :—

To make a change in a single word in this constitution, there must not only be an absolute majority of both houses of the Federal Parliament; but the change has to be submitted to the electors in the several colonies ; and unless there be a majority of the people, and also a majority of the States in favour of the change, the change cannot be made. Even if four out of every five Australians voting vote for the change, the change is not necessarily carried.

Take these figures, which are quite possible: Suppose a change in the constitution proposed, as to which the great bulk of the large populations of New South Wales and Victoria are agreed, but as to which opinion is nearly equally divided in the other three colonies. Of course, I am taking the differences in population as they stand at present ; but the differences in population will probably be greater hereafter. Assume that you have overcome the difficulty of getting an absolute majority of the two

Houses in favour of the change. Then suppose that in New South Wales 100,000 vote for the change and 10,000 against: suppose that in Victoria 90,000 vote for the change and 10,000 against; suppose that in South Australia 14,000 vote for the change and 15,000 against; suppose that in Tasmania 6000 vote for the change and 7000 against; suppose that in West Australia 6000 vote for the change and 7000 against. Then you have 216,000 electors voting for the change, and 49,000 voting against it. That is to say, you have more than 4 to 1 in favour of the change. Yet that change cannot be made. Public opinion is thwarted. After the prolonged discussion which must have taken place before such a stage could be reached, the will of the great mass of the Australian people cannot be carried into effect. And the Australian people have no remedy, for they have, in the words of the preamble, "*agreed* to unite in one *indissoluble* federal commonwealth . . . *under the constitution hereby established.*" The constitution binds them as by a contract, and the British Parliament will have to let the Australian people lie in the bed which they have made for themselves.

But I have not yet told you the worst. There are some provisions of this bill which cannot be altered at all, even though all these conditions, the difficult conditions to which I have referred, should be fulfilled. When you get a copy of the bill, look at the last clause of the last section, and weigh it well. Any layman can understand as well as any lawyer the point to which I am going to refer. An alteration diminishing the proportionate representation of any State in either house of the Parliament is not to become law unless the majority of the electors voting in *that State* approve the proposed law. This clause is difficult and obscure in its application to the House of Representatives, but it is clear as to the Senate. To take a possible case: If New South Wales should hereafter have 20,000,000 people, and Tasmania 200,000, Tasmania must continue to have the same number of members in the Senate as New South Wales, unless Tasmania consent to have the number reduced. Under this Bill we are to start with six Senators for each colony, no matter what the population. You may, in other words, have 100 people in New South Wales for every one in Tasmania; and yet Tasmania is to have the same influence in one of the houses as New South Wales; one person in Tasmania is to have as much influence on that house as 100 persons in New South Wales. We cannot alter this precious arrangement unless Tasmania consent. You might as well say we cannot alter it at all. If the sky fall we shall catch larks; and if Tasmania consent you may reduce her power in the Senate.

Now, I should personally be willing to accept a worse consti-

tution than this is in other matters, if there were reserved for the future people of Australia reasonable facilities, after full deliberation, to change the constitution where it proves to be defective or unsuitable. Sir George Turner has, the other day, put before the public a number of points on which he regards the bill as defective and injurious. Well, even if, as he estimates, the Victorian Treasurer may have to find some £500,000 a year more, for some years to come, to compensate him for the loss of sugar duties and other intercolonial duties, and to meet Victoria's share of the extra expenditure of the Commonwealth, that would not be too high a price to pay for a good system of Federation. The inconveniences felt during some years of transition will be as nothing compared with the advantages of Australian union. So strongly do I feel impressed with the value of a federal union that I should not dream of voting against this bill for the reasons which operate on Sir George Turner—if we only trusted the free people of Australia to do justly hereafter, to make such changes as they may find to be necessary, to be, in fact, as wise and as fair as ourselves. But no—that will not suit our wiseacres. We know better what will suit the people of the after-time than they can know themselves. I say nothing—nothing—nothing should be made so rigid, so absolutely unchangeable. You must have the ultimate sovereignty somewhere. I may put out of account the British Parliament, which will not, cannot constitutionally, interfere with our internal Australian arrangements, especially when they are the result of a solemn agreement and compact. I say that subject to the theoretical sovereignty of the British Parliament, the practical sovereignty in our Australian affairs ought to rest with the Australian people. As this bill stands, we are depositing the sovereignty in a parchment document, which cannot be moved by prayers, or swayed by reason, or impelled by force. I ask you are the Australian people (in the words of Shakespeare) to be thus

> " bound in with shame,
> With inky blots and rotten parchment bonds ?"

You will notice that Sir George Turner has not touched this point, and with good reason. For he, and the other ministers, have made a mistake with regard to it. Not only did they vote for equal representation of all colonies in the Senate—voted that Tasmania with its 170,000 people, should have the same voting power as New South Wales with its 1,320,000—but they voted that this provision should be unchangeable, no matter how much Tasmania may dwindle or New South Wales increase. As our Victorian ministers cannot complain of this feature, the rigidity of the constitution, there is all the more need that I should call your attention to it.

"Well," it may be said, "what is this bill which is to be like the law of the Medes and Persians that altereth not." Now, I do not intend to go in full detail into all the provisions of this bill. I propose to fix your attention on certain of the main features which, to my mind, ought to affect your votes. You would not endure my speaking for more than an hour or two; but I shall be happy to answer any questions afterwards. I frankly tell you that in my opinion many of the provisions are a great improvement on the bill of 1891. Federation is a grand ideal towards which we are making rapid strides. We are one people—we have one destiny. We are adjoining communities of the British type, under the British flag, occupying a great continent far removed from the other centres of civilization. We have the same origin, the same habits, the same ideals. Our families are scattered widely over the continent, and the scattered ones find themselves at home among fellow-countrymen, in West Australia as well as in Victoria. We are labouring to express that unity in political terms; and we shall do it before we are done. Federation must come, and soon. We all want it. I could wish that at the poll to be taken on the 3rd of June, the Government could make arrangements to have another question submitted at the same time. In addition to the question, "Are you in favour of this bill?" we should ask, "Are you in favour of federation?" and the answer "Yes" would be so overwhelmingly preponderant as to give a great impetus to the federal movement. Personally, I have only found one man in Geelong who is against federation. He supported me in the election of 1894; but he told me last October that he was voting and working against me, because I was one of the federal delegates, and helping federation; and federation would be the ruin of Victoria. So I lost his vote; but I did not lose my seat. Every new discussion brings us nearer to this great goal. I have rejoiced to watch, in the course of our discussions, the steady growth in the convention of what I regard as the true federal idea; but still, the narrow provincial spirit is too much for us. My objection to this bill is, not that it is federal, but that it is provincial. I have come to the conclusion that it ought to be called "a bill to perpetuate provincialism." It is provincial, in that it refuses to allow the great intercolonial rivers of Australia—such as the huge Murray system, which extends from Queensland through New South Wales, Victoria, and South Australia—it refuses to allow this river system to be treated as an Australian subject in Australian interests by the Australian Parliament. It is provincial, this bill, in that it refuses to allow the railway systems of the colonies to be worked for the benefit of Australia as a whole, without regard to state boundaries. It is provincial, in that it leaves to the provinces, the states, large control even over those subjects which are

called and recognised as federal—in that it creates a States-house, the Senate, by means of which the selfish provincial spirit—provincialism with its clumsy, greedy fingers—is to retain its power over Australian subjects. This states-house theory is out-and-out provincialism, under a softer name. I say that Australian subjects should be dealt with by the Australian people as a whole, and not by the states, which have their own state subjects to attend to. Yes, provincialism is as yet too strong for us. It is very hard for anybody to give up a power which he has once enjoyed; and it is still harder for an organised state to make a voluntary surrender.

In framing a federal Constitution, there are two main problems: One is to settle what are to be the federal subjects, the business to be entrusted to the federal Parliament and Executive; the other is to provide that the opinions of the people within the federation shall, after due deliberation, be carried into effect in regard to those subjects. As for the subjects, I regret, as I have said, the provincialism which has kept the railways and the rivers out of federal control. But I should be willing to trust to the progress of public opinion for the federalizing of these subjects, if we found that fair play, free play, were given to public opinion. But fair play is not given to public opinion. I think that the subjects handed over may be divided, roughly, into three classes: commercial subjects, social subjects, administrative subjects. Under the commercial subjects I should put the regulation of foreign and intercolonial trade and commerce, banking, insurance, bills of exchange, insolvency, patents. Under the social subjects, I should put marriage and divorce, old age pensions, conciliation and arbitration in labour disputes. Under the administrative subjects, I should put the postal and telegraphic services, defences, light houses, quarantine, sea fisheries. To give expression to public opinion on these subjects, there are to be two Houses of the federal Parliament—a Senate and a House of Representatives. The House of Representatives is, in a certain limited sense, to be based on population—one member for every 53,000 people at the start. But no colony is to have less than five members, and therefore Tasmania and West Australia, although they have populations under 200,000, are to have five members each. This will give a house of 64 members, probably. As for the Senate there are to be six senators for each state, no matter how few or how many the people. That makes 30 senators for the five colonies; and, as it is provided that the number of members of the House is to be, as nearly as possible, only double the number of the members of the Senate, there could be only 60 members in the House, but for the special advantage given in the House to the least populous states, Tasmania and West Australia. I want you to observe that *an*

increase in the population of Australia, no matter how great, does not involve any increase in the number of members in the House. Unless the number of States be increased, or unless the number of senators be increased equally for every State—say from 6 to 10—there can be no increase of members in the House when Australia's population has increased to 50 or 100 millions. I do not know how it appears to you, but to me it appears ludicrous, even childish, to make the number of members of the National House—the House which represents population—depend in any way on the number of States. What on earth has the number of States to do with it? Under this precious scheme, the *total* number of members in the House of Representatives will in no sense depend on population; but the *distribution* of the members will. The 1891 bill and the United States Constitution were more liberal in this respect; for they allowed one member for every 30,000 of population at the first. You are aware how difficult it is for men of moderate means to contest large districts, and how large districts are very apt to fall into the hands of the money-power. Here in Geelong, you have two members for 24,000 people. In the House of Representatives there will be one member for 53,000; and it is quite on the cards that there may be one member for every million.

So much for the House of Representatives. As for the Senate, there are to be an equal number of members for each original state; and this can never be changed. The Senate is to be a states' house as distinguished from the people's house. I have consistently objected to this system, and the more that I have thought and read upon the subject the more am I convinced that the theorists who are imposing the system upon us are fundamentally wrong. I object to having a states' house in addition to a people's house—a house in which the states, as states, are to be a check on the people. Some say that this is a democratic constitution. I deny it, absolutely; and I say that no one can clearly appreciate democratic principles who does not see that this provision is inconsistent with democracy, or with peace, order, and good government. It violates the principle of the rule of the majority. This rule is not a fetish—it is not an unreasoned theory. It is simply based on fundamental physical laws. The majority of the people are stronger than the minority, and in place of fighting it is better to yield to numbers. It is better to count heads than to break them. To judge from some recent speeches we shall have to go back to first principles again. We liberals uphold the rule of the majority in order to attain peace—to make particular interests, special interests, subordinate to the general interest; to make the laws of a nation a true reflection of current opinions and current culture. I came cross a passage in John Locke the other day—the great John

Locke, who, in his "civil government" 208 years ago, explained the conditions of this rule. He says, speaking of any political community, as "it being one body must move one way, it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority." In Victorian subjects the majority of Victorians should rule; in New South Wales subjects the majority of the people of New South Wales should rule; in Australian subjects the majority of the people of Australia should rule. Mark my words, there are more ways of interfering with the will of the people than by property houses. We must not suppose that by getting rid of property houses we are securing that effect shall be given to the will of the people. You can block the people just as well by the device of states' houses, or by the device of an unalterable constitution. What you have to aim at, in any house of parliament, is to get public opinion properly reflected and voiced, and you cannot get public opinion properly reflected and voiced in a house in which one-tenth of the people paying one-tenth of the taxes, may have nine-tenths of the power. Even at the start, one-fifth of the Australian people paying about one-fifth of the taxes will have three-fifths of the power of the Senate; and the differences of population will increase as the years roll by. Under the constitution of the State of Connecticut the three original townships returned the same number of members. The same provision remains to this day, although one of the towns has over 100,000 people, and another is a mere village with a public-house and a rouseabout; and, as a consequence, the name of Connecticut has become a by-word in the United States for its backward politics. Recollect that thinly peopled states are the least progressive, have the lowest political intelligence. In large populations there is the friction of mind with mind, and a keen discussion of social and political problems. Small, scattered populations are the stronghold of the obstructives; they become the pocket-boroughs of the wealthy. What is the reason that England has remained so long free from revolution while all the states of Europe suffered from it? It is because the constitution in substance recognises the right of the majority to rule. As Dicey points out, revolutionists know that they cannot succeed unless they have the majority of the people with them; and they know in England that when they have the majority of the people with them they can, without endangering lives, change the character of the House of Commons and accomplish their purposes. The House of Commons is truly sovereign, for it can change the constitution as it likes. It is urged, by way of excuse for equal representation in the Senate, that even if a man in West Australia is to have eight times the voting power of a man in Victoria, those men who think with us in West Australia will have eight times the power as well as

those who think against us. What an excuse! How would that be accepted in Manchester at the time of the Reform Bill of 1832? When the great population of Manchester found that the rotten boroughs of Gatton and old Sarum had equal representation with Manchester, would they have been satisfied with the statement, "Oh, our friends in Gatton and Old Sarum will be over represented as well as our enemies." It is remarkable that the theory of a states' house had almost an exact parallel in the Tory theory of 1832. The Tories argued gravely that the House of Commons was not meant to represent the people or population, but such communities or interests as the King chose to invite to consult with him, and on this principle they justified a system under which, as Lord John Russell said, "a ruined mound" sent up two members, "three niches in a stone wall" sent other two members, and "a park where no houses were to be seen" sent other two. I tell you, it is possible to obstruct the play of public opinion by other means than property houses. You can obstruct it by a house representing states, or communities, or interests.

In the United States they had a good excuse for adopting the system of a states' house. The people had but a few years before been engaged in their war of independence. There was utter disorganization, anarchy in the states; even treaties could not be enforced; and certain of the less populous states—which had been already used to equal representation, as there had been no census—threatened openly to make terms with England, to re-admit the English troops, and thereby give a foothold from which the independence, so dearly purchased, could be destroyed. They threatened this unless equal representation were conceded, because, as Washington and Hamilton said, "the peculiarity of their political situation rendered it indispensable." It was conceded, and probably wisely. But although the evils of the system could not be so pronounced where the States are numerous as where there are only 5 or 6, thinking men have traced to this system the unjust war with Mexico, the growth of the slave power, and the great civil war. Now you find the Senate the stronghold in America of rings and trusts and corruption, which threaten the very existence of the great Republic. But for the less populous States, the noble proposal lately made from England for arbitration before war, and instead of war, would have been easily carried. As the *New York World* says:—"The 26 Senators who defeated the treaty, represent in whole or in part 17 States (naming them). These include the seven rottenborough and sage-brush States of Montana, Kansas, North Dakota, South Dakota, Nevada, Utah, and Idaho, whose total population by the last census was only 2,408,333 out of a total for the country of 62,622,250. . . .

. . . This vote does not represent the will of the people. This treaty has been warmly favoured by two administrations, the one democratic, the other Republican. The moral and patriotic sentiment of the country has expressed its approval through the *World's* great petition and otherwise with an unanimity and an enthusiasm never manifested in behalf of any cause since the war of the rebellion ended." The same comment has been made by the editor of the *New England Magazine* in the last June number. He says :—"Ten of the 26 Senators, from the five States of Idaho, Montana, Nevada, and North and South Dakota, represent a combined population smaller than that of either of the cities of New York, Chicago, Philadelphia or Brooklyn. Nevada, with the same power in the Senate as the largest State in the union, has a population (60,000) less than that of Worcester, or Lowell, or Fallriver, or Cambridge in Massachusetts. These were the States which blocked civilization and covered the Republic with shame before the world. . . . . Only the constitution of the Senate, which makes it a grossly and grotesquely unrepresentative body, makes possible even such a minority vote as that which defeated the arbitration treaty, and that the overwhelming majority of the American people, and almost all of the country's intellect and conscience are on the side of peace and reason, and the proposed advance."

This is the pernicious system—this is the ridiculous States' house theory—which is imposed upon us by this bill ; and—let me remind you once more—*this system can never be changed.* They will tell you that without conceding this system there never could be federation. That is all nonsense—the experiment has never been tried. The doctrine was laid down as if it were essential to a federation as a fact, not as a concession. What could the representatives of the less populous States do but accept a concession which was offered to them as if it were a matter of course! And if the concession be pleasing to the smaller States, it is, of all other objections to this bill, the strongest objection in New South Wales ; and without New South Wales there will be no federation. In the N.S.W. Assembly 59 members voted against equal representation and only 4 voted for it If that is not a significant vote I do not know what is ; and such. a newspaper as the *Spectator*, in England, has backed the New South Wales members up in their attitude.

A great deal of capital is being made out of the fact that this bill provides for one man one vote. It is a mistake : it does not. In each State each *elector* is to have one vote ; but all men are not electors. There is a property qualification and an income qualification in Tasmania ; in West Australia there are certain stringent residential and other qualifications ; and in Victoria, as is known full well, many men are deprived of a

vote by certain machinery in the Purification of Rolls Act. There are ways of making the franchise restricted in practice, although liberal in theory. Besides, it cannot be "one man one vote," so long as a Tasmanian has, in effect, 8 votes for a Victorian's one vote for the Senate; or so long as a miner at Coolgardie has nine votes for the one vote given to a miner at Broken Hill.

You will be told that we are to have the time-honoured system of responsible government resting on the supremacy of the House of Representatives. For my part, I do not believe it. Of course, though the words "responsible government" are nowhere mentioned in the bill, you may be able to achieve the result by putting in the House of Representatives supremacy in the money power. The Assembly in Victoria can turn Ministers out and put Ministers in, because it has a decided advantage over the Council in money bills. The Council cannot amend any money bills, and the Assembly can refuse Ministers money supplies if the Ministers have lost the confidence of the Assembly. In this bill (s. 53) you will find words to the effect that the Senate may not amend the principal money bills—bills imposing taxation and bills appropriating revenue for the "ordinary annual services of the Government." But if you look a little further on, you will find that the Senate can "request" amendments, and can keep on "requesting" as often as he likes. The Senate can send down "requests" at any stage. I say there is no material difference between the Senate proposing amendments to the House, and requesting amendments to the House. Calling it a different name does not alter the true nature of the thing. The Senate will be able to escape the odium of rejecting the measures absolutely which are necessary to keep the Government going; and it can keep Ministers on tenterhooks, can worry Ministers until they accept, in whole or in part, the suggestions of the Senate. Money bills won't wait; the Queen's Government must be carried on, and Ministers must generally yield. The power of veto—of saying "No"—is often fully as valuable as the power of originating. You saw not long ago how a Ministry can be coerced by a secondary house in the matter of a money bill. The Turner Ministry got the Assembly to pass a bill imposing a land value tax and an income tax. The Council rejected it, with a clear intimation that it would pass an income tax if sent up. The Treasurer was in dire straits; he was in sore need of money; he was faced with another huge deficit, and he meekly submitted, brought in a bill for income tax, and it was passed at once.

But we are told that the Senate cannot *originate* money bills—that taxation bills and ordinary appropriation bills must first be put before the House of Representatives. That will not secure

supremacy to the national House. It does not secure supremacy to the national house in the United States. By the constitution of the United States all taxation Bills must originate in that house, and by long usage all appropriation Bills do originate in that House. And yet the Senate has become the stronger House—more frequently carries its way in money and other matters. Constitutional writers, such as Senator Hoar, and the Frenchman, Boutmy, have pointed out how this power of originating money Bills has become, in the United States, "incredible as it may appear, a cause of inferiority and of diminished influence in financial matters." For some time after the constitution was established it was thought that the House of Representatives was going to become another House of Commons in strength and prestige. But the Senate gradually felt its power and used it, and the House is generally compelled, at the end of the session, to accept the Senate's proposals. The House having the originating power is under a responsibility to the country of devising means for carrying on the administration, and it is driven to choose some course which will satisfy the Senate. You must remember, also, that in this bill the Senate is to be elected by the whole colony, not by districts. That is a noble provision—a provision which secures that one house at least shall be free from petty local influences, although it will be necessary and possible to make some provision, by Hare's system or some other method, whereby the country districts shall get their fair share of representation. But this provision for election by the whole colony, combined with the longer term of office, and retirement by rotation, as distinguished from retirement by ordinary dissolution, will all tend to make the Senate the stronger and weightier house. It will justify the triumphant boast of Sir Richard Baker, which he uttered after the bill had been passed, that he looked on the Senate as "the pivot on which the whole Federal Constitution will revolve." And yet how absurd it is that that house, the Senate, which represents the minority of the taxpayers, should have more power over the money of the taxpayers than that house which represents the majority of the taxpayers. As Mr. Reid well put it, we ought to give superior money powers to the people's house, because taxes are raised from the people and not from the States. If the states paid equal taxation, that would be a ground for contending that the States' House shall have an equal voice as to the raising and application of the money. But the States do not pay equally. Even at the start, one-fifth of the people of Australia will have three-fifths of the power of the Senate; and it is a nice arrangement to give this one-fifth of the people control of taxes of which they pay only about one-fifth, and the others four-fifths.

But as if we had not enough difficulties already to face, this bill throws an apple of perpetual discord between the two houses. This precious distinction between "requests" and "amendments" will lead to continual friction between the two houses in appropriation bills. For you must call it a "request" when you are dealing with a bill which appropriates revenue "for the ordinary annual services of the government," and you must call it an "amendment" when you are not. At present, in all the colonies, we put all kinds of appropriations into any appropriation bill. The distinction is quite novel; no one ventures to define what the "ordinary annual services" are; the treasurers are in despair about them; and the definition will have to be considered and re-considered as often as the increasing complexity of our modern social organization raises the need for new kinds of payments. I should like to know whether we are to treat as an extraordinary appropriation and to put into a separate extraordinary appropriation bill, an allowance of £50 to the widow of a deceased warder, or an extra shilling a week to the pay of a messenger.

"But," it is said, "there is provision made for meeting deadlocks between the two Houses. There is to be a simultaneous dissolution of the two Houses, if there be a serious disagreement; and if after the dissolution they still cannot agree there is to be a joint sitting in which a majority of three-fifths can carry its way." This provision for a double dissolution is, I conceive, only right, and will exercise a healthy influence on ordinary legislation. I cannot complain of it, for it was I who suggested it, though not as a substitute for the referendum. I moved it in Adelaide, when I was beaten by 24 to 7. It was carried in Sydney; and this change of part is a good illustration of how repeated discussions are leading us towards a workable federal constitution. If, as happens under our Victorian Coustitution, only one house is sent to the country in the event of a critical disagreement, the position is grossly unfair. The members of one house are sent to face the worry and anxiety, and expense of a general election; while the members of the other house can roll back on their velvet cushions and laugh. There can be no reason why, when both houses are elective, both houses should not be liable to face the electors. But the provision for simultaneous dissolution cannot be regarded as a remedy for deadlocks. A deadlock proper is a dispute during which money cannot be got to carry on the administration of the country. This double dissolution is a weapon of last resort, and can rarely be applied to money bills; for money bills cannot wait as other bills can. The Ministry will generally find it necessary, as our ministers found it in 1895, to back down, to yield. Besides, it still allows the minority of people to rule, as the smaller states may back up their senators;

and the voting is not necessarily on the merits of the measure proposed. The machinery is too cumbrous, too risky, too inconvenient to be often brought into play. Then, at the final joint sitting, to require a majority of three-fifths is unfair. Say that the two houses have 94 members; to get three-fifths of the joint sitting in favour of a measure, you would have to get 57 votes. If you had 56 one way, and 38 the other, the 38 would win. Why? I moved that an ordinary majority should be sufficient; but I was defeated.

In speaking of this double dissolution, it may not be amiss for me to say that though from the first I feared that we should not get a workable constitution, that we had started wrong, accepting false theories, I worked with all my might to get what I could. In the words of the Ingoldsby legend, I

"Wisely fell back upon poor Richard's plan,
"When you can't what you would, you must do what you can."

I have even succeeded in carrying on my own motions, clauses which I am amused to find Mr. Barton now referring to as inducements to accept the constitution. But he spoke against them, and he voted against them. I refer, for instance, to the power given to the Federal Parliament to legislate for conciliation and arbitration in labour disputes extending beyond the limit of any one State. I was beaten in Adelaide, but I succeeded in Melbourne, in the face of Mr. Barton's opposition; and now I find Mr. Barton referring to the clause as a valuable and attractive provision. I may refer also to the clause which prohibits the Federal Parliament from imposing religious observances, or interfering with religious liberty. Mr. Barton did all that he could against it, and he could do a great deal as leader of the Convention. Your Victorian Ministers also did their best to emasculate it. And now I find Mr. Barton boasting of the clause as if it were the great charter of religious liberty.

Before I pass from this machinery for settling disputes between the two houses, I should like to refer to the refusal of the Convention to allow the referendum. You know the idea is that where two houses differ fixedly as to an important measure—when session after session the measure is sent up and refused—the electors should be asked at the ballot-box to say Yes or No to the measure. A dissolution and general election does not satisfactorily ascertain the will of the people, or which house in the opinion of the majority of the people is right. For an elector, in voting for a member, is influenced by a number of considerations which have nothing to do with the measure on which the houses are dissolved. An elector may vote for Jones because he likes Jones personally, or because he dislikes Smith the other candidate, or because Jones is on most subjects a good

man. But on a referendum there is a neat issue put before the people—Do you wish for this measure or not? Nothing, in my opinion, would conduce more effectually to a healthy and intelligent interest in politics; nothing would—with proper safeguards—have such a beneficial influence on our political life. But I am not disposed to push my views on this subject to an extreme. I should be willing to trust the future people of Australia, that they would adopt the referendum when the time is fully ripe—provided you make it reasonably possible for them to do so. I should trust fearlessly to the spirit of progress. I should not refuse a Federal Constitution for the mere reason that the referendum is not provided for. But, unfortunately, so far as I can see, if the referendum be not adopted in this Constitution, it can never be adopted. For the referendum, whereby the final decision would be left to the majority of voters in Australia is a distinct violation of the theory of a State house—a house which is to speak the voice of the organised State and not of the people as a whole. If the peoples' house differ from the States' house, and if their differences can be settled by the majority of Australians voting, it is at once urged, "What is the good of a States' house to check the peoples' house? Why, this would destroy the effect of equal representation in the Senate!" It was on this ground that our Ministers, Sir George Turner, and Mr. Isaacs and Mr. Peacock voted against the referendum in Sydney. In Sydney, there was a chance of carrying it. Mr. McMillan, a New South Wales Conservative, said he was prepared to vote for it. Mr. Holder, a South Australian minister, and a staunch advocate of the views of the less populous States, said that he would be prepared to concede the referendum. The moment was critical. Then, and only then, was there a chance of getting a solution which might have reconciled liberals to the evils of equal representation in the Senate. But Sir George Turner and Mr. Isaacs intervened, and shattered all our hopes. They spoke and voted against the referendum on the ground that it was inconsistent with equal representation. Of course it was inconsistent; it was inconsistent with a false principle. But the attitude might well have been taken that if, for the protection of the less popular States, there was to be a States' house, a house which could stay the hand of a majority of the people doing an injustice on impulse, yet that, in the end, in the final resort, the majority should rule—the body politic should move, as Locke says, "that way whither the greater force carries it." But the opportunity was lost; and for ever, so far as regards this bill. If, under this bill, a proposal be made for a referendum, the Senate is almost forced to throw it out, and even if, by any good fortune, it passed the ordeal of the Senate and got an absolute majority, then the electors of the less popular States would be hardly

likely to consent to a curtailment of their influence. I think, therefore, I am within the mark when I say:—

The Bill prohibits any change in the system of equal representation for ever.

The Bill makes it practically impossible ever to adopt a referendum, as it would interfere with that system.

In other words, under this bill we should have to give up, for ever, the simple, peace-giving, wholesome principle, that the majority must rule; and we must give up for ever all hope of the referendum.

I desire now to direct your attention to the provisions as to finance. The Federal Parliament may put on any taxes that it likes—customs or excise, or direct taxation; and it may borrow any money. No customs or excise duties are to be imposed by any State. With regard to the vexed question of protection, I think that I should be wanting in my duty if I did not tell you that, in my opinion, a protective tariff is by no means necessary under this bill. That a large sum must be raised by customs and excise duties, at all events at the start, I admit; but that it may not be raised by revenue duties, as distinguished from protective duties I do not admit. I am convinced by the reasoning of Mr. Pulsford, of Sydney, who has shown that a revenue of more than £6,000,000—the revenue estimated by many as necessary at the start—can be raised by duties on narcotics and stimulants, with a revenue duty on drapery, tea, coffee, and other goods. But I heartily concur with the policy of leaving this question absolutely open. I am always willing to trust the Federal Parliament for the solution of all political and social problems within its scope—provided always that you trust the people who are behind the Federal Parliament,—provided that you make that parliament a fairly accurate exponent of public opinion throughout Australia.

Now, the several States are to be left to direct taxation, and a share of the surplus revenue raised by the Commonwealth, if there is any surplus. By Sir Edward Braddon's amendment, not more than one-fourth of the customs and excise can be spent by the federal parliament: the three-fourths must be returned to the states. You will ask at once, in what shares? Well, for the first five years after uniform customs and excise duties have been imposed, each state is to get back, substantially, its own receipts under the Commonwealth taxes, less its proportion of the federal expenditure, based on its population; and then after the five years, parliament has to settle how the surplus is to be divided. The customs houses and inspection at the border must be kept up until uniform duties are imposed, and for 5 years afterwards. And then? How the surplus is to be divided after the five years will, in all human probability, involve long and

bitter struggles, renewed from time to time. I observe that Sir George Turner expects a general scramble, and log-rolling, and possibly a combination among the smaller states, to get better terms out of the larger. He seems to fear a combination of the smaller states against the larger, when the question of money is at issue. I concur with Sir George Turner in regretting that the convention did not see its way to provide that the surplus be divided in proportion to population. This would be the broad, brotherly, Australian method of disposing of the difficulty; but it could not be adopted because of the timidity of the delegates from New South Wales. You have little idea how confident some people are in New South Wales that their colony must be richer, and must contribute far more per head of population to the revenue than any other colony, and this idea, even if fallacious, must be reckoned with. If, as I apprehend, the wealth and social condition of the people of the various colonies are approximately equal in proportion to population, when you take one decade of years with another, and when you allow for the disturbing effects of loan moneys, we may have some hope that the Federal Parliament will be persuaded to distribute the surplus in proportion to population. Meantime, the narrow provincial solution holds the field. Bear in mind that the Federal Parliament is under no obligation to provide any surplus—to raise any money by taxation which is not required for federal purposes; and that unless a handsome surplus be provided, the various states will be unable to pay the interest on their debts. The necessities of the State Governments in this respect will make them interfere in the elections for the Federal Parliament, and will introduce into the State politics the disturbing influences of the federal politics, and into federal politics the disturbing influences of state politics. Members will go into the Federal Parliament pledged to support the principles of some state party, and into the State Parliament pledged to support some federal party.

With regard to rivers, I was one of those who fought hard to have the great Murray system treated on Australian lines, as an Australian question. In New South Wales they have great hopes of utilising the waters of the Darling, the Edwards, and the Murrumbidgee, tributaries of the Murray, for conservation and irrigation, for the development of the lands of New South Wales. Mr. Reid spoke repeatedly of the waters of these tributaries as New South Wales waters, although the Darling is very largely fed from Queensland; and but for the water which comes from Victoria, the Edwards and the Murray would not be of much good. The South Australians, who hold the lower part and mouth of the Murray, wished to secure that the Darling waters should not be absolutely at the mercy of New South Wales, and that the

Darling should be kept open for navigation so far as nature has made it navigable. If South Australia and New South Wales were ordinary owners of land along the course of the river, South Australia could in the law courts have New South Wales stopped from making any material diminution in the volume of water which comes to South Australia. Now, in a country so dry as Australia, the question of the use of the rivers takes an exceptional importance ; and we have hardly any true analogy to guide us. Sir George Turner backed up New South Wales in Adelaide ; then backed up South Australia in Melbourne ; and then backed up New South Wales again when he realised that conservation and irrigation were probably at present of more importance to Victoria than navigation. Therefore, he proposed that for all time the purposes of conservation and irrigation should be made paramount to the purpose of navigation. I wanted to leave the whole matter to the Federal Parliament, to adjust the respective claims of the various states in the general interests of Australia as a whole. We cannot tell what the future will bring forth, and what may be the most beneficial mode of treating these rivers. We have no right to say now, in 1898, what use shall be paramount for all time. The South Australians were willing to accept my proposal ; but we did not succeed; and, as the power to regulate trade and commerce has been held in the United States to involve a power to keep navigable all inter-state rivers, a clause was eventually carried to the effect that the Commonwealth shall not by any regulation of trade and commerce, abridge the right of a state, or of the residents therein, to the "reasonable" use of the waters of the rivers for conservation and irrigation. The phrase sounds well ; but I am afraid that it leaves us open to long and bitter disputes in the Federal Parliament, and in the Inter-state Commission, and in the law courts. To speak candidly, every one remains in a thick fog about the rivers. All depends upon the word "reasonable." No one knows what can be done, and what cannot be done, until the matter is brought to a test by actual facts, by actual proposals to put these waters to some definite use. I may say that I was much struck with the liberal tone of the New South Wales newspapers during this discussion. They scouted the narrow and provincial views taken by Mr. Reid and his colleagues. The people are more federal in spirit than their representatives. It often happens that agents are more exacting, less generous, than their principals. I feel sure that if this bill be rejected we shall approach the subject next time in a more federal spirit, and recognise that the Murray system must be regulated by the Federal Parliament, for the best advantage of Australia as a whole. In this discussion, as well as in the discussions as to

railways and other important matters, I found that at the root of the provincial objections of the New South Wales delegates was the great blunder of the States House, with its equal representation. If the New South Wales members felt that the weight of the great population of New South Wales would be duly felt in both houses of the Federal Parliament, they would, I am convinced, have much more readily submitted to leaving the whole question to the Federal Parliament.

But if disputes and litigation may arise from the provisions as to the rivers, absolute confusion and dismay may be expected from the provisions as to railways. I was one of those who advocated the taking over of the railways—the great arteries of the Australian body—by the Federal Parliament. The idea of federalizing the railways is rapidly gaining ground. Now one member, and then another, came over to it. But opinion had not sufficiently ripened by the time that the convention ended. I am happy to say that power has been taken for the commonwealth to acquire the railways, or any part of the railways, of any State by agreement of purchase. But until the railways are purchased, what is to happen? No one knows. I understand that Mr. Matheson, reading the clauses as a layman, gave a report as to their effect on the Victorian Railways and Victorian trade to the Government; and that the Victorian Government sent him back the report, on the ground that he misunderstood the clauses, and got from him another report. Sir Geo. Turner has referred briefly to the later report. I should much like to see Mr. Matheson's original report, and the legal construction put on the clauses for Mr. Matheson's guidance, and his revised report. They have not been published, so far as I know. You all know that there has been for years waged a war of railway rates between the eastern colonies. For instance, by means of preferential rates, charging more for Victorian goods from and to Echuca, than for Riverina goods over the Victorian railways, our Victorian railways and our Victorian ports have been able to retain a large share of the Riverina trade. These are called "preferential" rates because they "prefer" New South Wales producers and New South Wales produce to Victorian producers, and Victorian produce, and Victorian storekeepers, by allowing goods to and from New South Wales to be carried much more cheaply. On the other hand, the New South Wales railways carefully keep away from the Victorian border (except on the main trunk line), and tap the Riverina, and charge excessively low rates from the Riverina to Sydney. It is about twice as far from Hay to Sydney as it is from Hay to Melbourne; but to induce the Hay people to send their wool to Sydney, and to get their stores from Sydney, the New South Wales railways charge very low rates for the long distance. Cootamundra is

about half way between Hay and Sydney; but it costs about as much to carry a bale of wool from Cootamundra to Sydney as from Hay to Sydney. These low rates for long distances are called "differential" rates. Now, you must allow some differential rates, you must have low rates, tapering rates, so as not absolutely to ruin the producers in the far back country. No one denies that. But there is a point at which the differential rates become improper, from a broad Australian point of view; and that point is, I think, when the rate is made very low for the mere purpose of attracting trade from ports of one State to ports of another. Victoria cannot make low tapering rates, so as to get the Riverina trade, for she has not the Riverina railways. Her only weapon in this war is the preferential rate, under which a man in New South Wales has his goods carried at a much lower rate, say from Echuca, than a man in Victoria. We Victorians were willing to lay down our weapons if New South Wales laid down hers also. We wanted this unfraternal struggle, this ruinous, cut-throat struggle, to cease. The Convention, as a whole, was with us in the justice of our claim; and it was, I must say, owing to the want of tact (I shall use no stronger word) on the part of the Victorian Ministers that we did not succeed. New South Wales insisted that she was entitled to charge as low rates as she chose within New South Wales territory, but that all preferential rates should cease. At last I carried a clause forbidding all rates which were framed merely with the view of attracting trade from ports of one State to ports of another. This, admittedly, would have covered the unjust differential rates of New South Wales, and, with some slight qualification, it would have prevented cut-throat rates of both kinds, while leaving the railway authorities full discretion in their general regulations. I carried this clause in the teeth of our Victorian Ministers by 18 to 15. Had the Victorian Ministers voted with me, I should have carried it by 21 to 12. But the Ministers would have none of it. The South Australians, who had been helping us nobly, and who voted with me, thought that there was no use giving to Victoria a clause which she did not want, and Sir Geo. Turner was asked to frame a clause in his own words. Mr. Kingston wanted to get the Victorian Minister's three votes on our side, as we had won by only a narrow majority, and might not hold the majority in a full Convention. Then Sir George Turner and Mr. Isaacs brought down their clause. It provided that the Parliament may forbid as to railways any preference or discrimination, if such preference or discrimination is undue and unreasonable or unjust to any State. You need not be lawyers to see that the whole provision turns on the words "preference or discrimination." The clause was carried, and mine was struck out; but it

was absolutely useless for our Victorian purposes. It enables the Parliament to prohibit unfair *preferences or discriminations*, but it does not enable Parliament to prohibit the unjust differential rates of New South Wales. In the New South Wales differential rates they charge the same to all persons for the same class of goods from or to any station. There is no preference or discrimination as to goods or as to persons. Sir George Turner in his speech admits that he thinks our preferential rates can be stopped, and that the New South Wales differential rates cannot; but he puts the blame on a clause carried by Mr. Grant allowing rates which are necessary for development. That is not fair. If Mr. Grant's clause were not in the bill at all, still there would be nothing to enable Parliament or the Inter-State Commission to interfere with the unjust New South Wales rates. Some people say, "Oh, you may trust the Inter-State Commission for what is fair and just." Probably, if you do not tie its hands. But its hands are tied. It is to have merely powers of adjudication and administration for the execution and maintenance of the provisions relating to trade and commerce. But there is no provision relating to trade or commerce which forbids any differential rates. I agree with Mr. Reid's view of these clauses, when he told the electors of New South Wales that the Commonwealth cannot interfere with the special charges made by New South Wales on the Riverina railways; and I agree with Mr. Wise, who says in the "Review of Reviews" that these clauses "do not abolish low rates for long hauls, nor do they deprive the State of the control and management of its own lines." I understand that Mr. Barton has expressed his opinion to the same effect.

With regard to this Inter-State Commission I must say that I do not think that the provisions relating thereto have been sufficiently considered. They will lead to much difficulty, heart-burning, and litigation. The Commission is to have such powers of adjudication and administration as Parliament deems necessary for the execution and maintenance of the provisions of this constitution relating to trade and commerce. This is to apply to the navigation of rivers, to shipping, to railways. The Commission cannot prohibit anything which the Constitution does not prohibit. It is to say what preferences and discriminations in railway rates are to be forbidden as unjust and unfair. There is to be an appeal from the Commission to the High Court on questions of law. The Commissioners are to have a seven years' tenure of office, and during those seven years cannot be removed except on an address from both Houses. I do not like entrusting so much to an irresponsible body. Who are to be appointed? If the Railway Commissioners of the several colonies are appointed they each will work for their own States as against

the interests of Australia as a whole. Speaking to you as a lawyer, I think that the provisions leave much in uncertainty; and I foresee much scope for quarrelling, not only in working out the problems committed to the Commission, but as to the relative powers of the Parliament, of the High Court, and of this Commission.

I observe that Sir George Turner still persists in his view that all the debts of the various States ought to have been taken over by the Commonwealth. I am surprised at this persistency. As Mr. Holder clearly pointed out, it would mean making a most valuable present to the bondholders without getting any equivalent from them. If the bondholders of South Australia, for instance, learn that the whole of the colonies have taken over the responsibility of South Australian loans, the bonds will at once rise in the market, and the bondholders will get the whole benefit of the rise, for nothing. If, on the other hand, as the bill now stands, the Federal Parliament has merely the power to take over the debts, it is possible for some able Federal Treasurer to formulate a great conversion scheme, whereby, in return for the Commonwealth assuming the responsibility, the bondholders may consent to exchange their bonds for the bonds of the Commonwealth before their bonds expire, and to take a lower rate of interest for the Commonwealth bonds.

I want to call attention to the provision for the admission of new States. To my mind, the provision for the equal representation of the States in the Senate will seriously interfere with the proper and necessary subdivision of the larger colonies. It is true that only the original States—the States which at the beginning of the Commonwealth adopt the Constitution—are to be necessarily entitled to six senators. In admitting a new State, the Federal Parliament may make such stipulations as it pleases with regard to the number of senators. But the practical difficulties are still great. You know that in Queensland there is an agitation for a division into three separate colonies—North Queensland, Central Queensland, and South Queensland. Now, suppose that all Queensland comes in as one original State, and then attempts to subdivide; or suppose that subdivision takes place first, and each part asks for leave to come into the Federation. Central Queensland has 56,000 people. I assume North Queensland has about the same number. That leaves about 368,000 in South Queensland. Is each of the divisions to have six senators? That will give Queensland eighteen senators as against six for New South Wales, which has three times as many people; and New South Wales is not unlikely to object, and Victoria, and, indeed, all the other colonies. Are the three divisions to have six senators between them? Then South Queensland is likely to object to having

fewer senators than West Australia, which has not half her population. Even if some intermediate course be adopted, and South Queensland is to have six senators, and each of the others two or three, Queensland will then have 10 or 12 as against six in New South Wales. If by subdivision you increase the total number of senators for the colony subdivided, you will have the other colonies opposing. If by subdivision you do not increase the total number of senators for the colony subdivided, you will have the colony which is to be subdivided opposing. It would be a curious thing to find this great fundamental flaw in the Constitution, this great crack running through the whole structure from basement to roof, and widening as the years increase, having the indirect effect of checking the necessary subdivision of these huge areas which we call colonies. No such difficulty arose in the United States, for there the new States were created from new territory, not by subdivision, as in Australia. Is it ever fully realised that the area of Australia is about nine times as great as the area of all the 13 original united States, and that the whole area of Australia is nominally within the boundaries of the existing colonies? The only colonies, by the way, which have little or nothing to hope from subdivision are Tasmania and our own colony of Victoria. It has to be remembered, also, that whatever proportion of senators a State begins with it must keep, for if the proportion were increased for every State when the population increases, it would mean a reduction of the proportionate representation of the other States, and that is forbidden by the last clause of the last section of the bill. For instance, Central Queensland might come in with two senators, might increase to 5,000,000, while Tasmania remains at 200,000. Still Tasmania must remain with her proportion of six to two as against Central Queensland.

As to bounties. The Federal Parliament may grant bounties. But inasmuch as many bounties might effect the same object as protection between the colonies, might interfere with intercolonial free-trade, the several States, were, at the first, absolutely deprived of the power to give bounties from the State funds. As this objection would not apply to bounties or aids to mining for gold, silver, and other metals, the Convention resolved, on my motion at Adelaide, to allow the States to give such bounties. But even this did not cover all the ground. You must be aware of the excellent effects of the butter bonus, in which Victoria set the example to the other colonies. If we had had to ask the Federal Parliament to grant such a bonus, in the first instance, before the experiment was tried, the Federal Parliament would probably have said No—that would be benefitting Victoria at the expense of the general Australian revenue. So with beet root, oil plants, and scent plants, and

other special industries; and bonuses for export to other countries would not generally interfere with freedom of trade between the colonies. Victoria, as Mr. McLean has pointed out, is pre-eminently the colony suitable for special industries and novel experiments—owing to the nature of its soil and its comparatively dense population. Therefore Sir George Turner very naturally wanted to give to the states a freer hand as to bounties. I managed to get a clause carried allowing any state to give any bounty, with the consent of the Governor-General-in-Council (that is of the Ministry of the day), provided that it did not interfere with freedom of trade between the colonies. But Sir George Turner would not have this. He was offered as the only alternative, a clause allowing bounties to be given by any state with the consent of both Houses of the Federal Parliament; and he took this latter alternative, although it involves the delay and trouble of getting the consent of both Houses. Not to embarrass our Premier, who from his official position should know better than I did what Victoria wanted, I consented to the withdrawal of my clause. I am not at all sure that I was right in so consenting.

There is a curious phase of this federal campaign which people ought to grasp clearly. The real contest will be in New South Wales. There will be no federation without New South Wales. Three colonies at the least must accept the bill, or the bill cannot be transmitted to the Imperial Parliament; and neither West Australia nor South Australia will accept the bill unless New South Wales accept it. It is so provided expressly in the West Australian Act; and there they are taking care to vote after the other colonies. I do not think that it is so provided in the South Australian Act, but I find that the South Australian Government has fixed their day of polling for the day after the polling in New South Wales and Victoria. They will not, in South Australia, come into the Federation unless New South Wales come in; for Victoria would have too much predominance; and, as one South Australian said to me, "Federation with Victoria is of no use to us. You can supply yourselves with everything that we could supply you with. What we want is the market of New South Wales." So that New South Wales holds the key of the position; and she knows it. If every elector in Victoria voted for Federation, that would not secure it. The very eagerness of our Victorians for federation, and their willingness to abandon sound constitutional principles for its sake, have produced a false impression. One delegate said, in effect, "Victoria must federate, or she will go insolvent." Another said, "You in Victoria are bound to take whatever we choose to give you." They mistake the warmth of our national, Australian sentiment, for an indication

that we in Victoria dare not, cannot stand alone. Dr. Cockburn is reported to have said to a newspaper man at an interview, that the bill would be accepted by Victoria "with eagerness," and in his colony by a substantial majority. I confess that I should like to show our detractors (I do not include Dr. Cockburn, of course), that Victoria is as able to take an independent stand as any of the colonies. I should like to teach them that Victoria will accept federation with eagerness, that she will make substantial sacrifices for federation, provided that the people of Australia are allowed to control their own destiny, provided that the bill is constitutionally sound. People talk of the need for "give and take" in a federal compact. Of course there must be "give and take." But it must be "give and take" in financial arrangements: I do not believe in bartering fundamental democratic principles. Give up as much money as you like; but do not give up our liberties—and the liberties and political privileges of the future people of Australia.

Why is it that the reactionary, the obstructive forces in Victoria are so eager for the acceptance of this bill? I do not suppose that Conservatives would formulate their reasons as I shall express them; but I will say that their instinct is leading them correctly. I do not entertain any unkind thought of our conservative opponents, many of whom are my personal friends. But, taking the class as a whole, they find that public opinion is gathering in strength against their views; that if the majority of the people in Australia are allowed to sway in the legislation of Australia, they will be hopelessly beaten. Their Mrs. Partington brooms of property houses, and so forth, will not long succeed in keeping back the rising tide. So they fasten their hopes on a States' House, to be a check on the People's house, and on a fixed, rigid constitution, enforced by a Federal Court, which will serve as an invincible sea-wall against the encroachments of the waters. In England, the Tories groan because they have not a hard and fast constitution like that of the United States, which does not permit of changes such as are possible under the English constitution. For my part, I shall recognise no right on the part of any house or body of men to interfere with carrying into effect the deliberate will of the majority of the people, to obstruct the peaceful operation of public opinion on our policy. A written constitution, which cannot be modified, is not amenable to moral pressure, to public opinion. It is a dead, lifeless thing which no arts of persuasion can reach. It is not susceptible of growth. In the quick change and movement of the world's development, it is—

"Like a dead, leafless log in the summer's bright ray;
The beams of the warm sun play round it in vain;
It may smile in his light, but it blooms not again."

What we want, above all things, is a constitution which may grow with the growth, develop with the development of the people; a constitution which shall be flexible, capable of adjustment to the needs of the people. We want a tree which has life and the promise of growth; we do not want an Agamemnon's sceptre, which will not have leaves or shoots, or ever bloom afresh since it left its parent stock in the mountains.

You will find that I shall be plentifully abused for this speech. I fully expect to be sneered at, called names, ridiculed; probably what I say distorted and misrepresented. I am speaking to a few hundred; the newspaper reports will speak to thousands and tens of thousands, "and none of them nodding." It would be much easier for me to shout with what is at present the bigger crowd in Victoria. But I won't do it—

> "I will not do it,
> Lest I surcease to honour mine own truth,
> And by my body's action teach my mind
> A most inherent baseness."

For I have a strong conviction that, with patience, we should get a much better constitution, one which will not leave a legacy of miserable provincialism for ages to posterity. They will tell you that if we do not get federation now, under this bill, we in these colonies will drift further asunder, federation will become more difficult, and we shall not see the movement revived within our time. I have considered this statement, and I do not believe a word of it. They told us the same in 1891; and they were wrong. Mr. Deakin warned his hearers in the Assembly that—

> "There is a tide in the affairs of men
> Which, taken at the flood, leads on to fortune;
> On such a full sea are we now afloat,
> And we must take the current when it serves,
> Or lose our ventures."

He warned his hearers of the aggression of the European Powers in the Pacific. He spoke of the temporary lull in their movements, because they saw they were driving the Australian colonies to federate. He said that we should see his reading of the situation was correct if that federal movement failed. He spoke of the dreaded influx of the Chinamen. He said—"The hour may strike too soon that tells us our united action has come too late; a series of sundered colonies may be seen drifting helplessly together when they might have stood together against a common foe. We have at this moment a magnificent opportunity lying within our reach, lying at our hands." What more impressive warnings could be given to-day? Mr. Munro, the Premier of the day, said (for he had been one of the Victorian delegates to the Convention of 1891)—"I say now

that I feel perfectly satisfied, that if we accept the bill as it stands we will get the very best form of federation which we could ever get." Another member, supporting the bill, said, "We are getting good terms offered to us, and if we do not accept them now we are not wise, for we may never get the same terms again." How absolutely wrong they were! We all see now how ridiculous was the scheme of 1891. We have in the bill of 1897-8 several important improvements. If the bill of 1891 had been accepted, we should have been tied up in the meshes of a constitution which would have been unbearable, a constitution which would have involved the ruin of some of the colonies, including Victoria. To-day you have new bogeys raised to frighten you. It is said that New South Wales may place tolls upon the Darling, may cut down further her Riverina rates, may put an export duty on wool coming into Victoria. If she should do so, her own people would suffer the most, and would cry out more loudly for federation. The truth is that what we have gained in the direction of liberal principles in this bill is gained for ever. Liberal principles, whenever grasped, abide. We are rapidly moving towards the grandest scheme of federation that the world has ever seen. Shall we arrest that progress by accepting this bill? Shall we pluck the fruit before it is ripe? I think of this glorious ideal of federation as of a noble and perfect fruit, rounding to ripeness, but as yet green and crude and acrid. Under the influence of a few more genial suns it will fall into our hands, mellow and warm-hued and luscious. This movement for federation will go on. It is the outcome of our pressing needs, the result of the overwhelming pressure of our public exigencies. I do not know any more disparaging reflection on the people of the Australian colonies than that argument that they will throw up the federal idea in despair if they cannot succeed on the first or second attempt. We must have patience. Our rebuffs are—

> "Naught else
> But the protractive trials of great Jove,
> To find persistive constancy in men."

Many of the delegates came to that convention bound by election pledges, by platform declarations, which they would be glad to modify if this scheme fails. We have started wrong in several matters. Discussion and criticism have shown us our mistakes. We have it in our power now to choose two courses; we are at the parting of the ways. One course is the course of passion, of impatience, of hysterical impulse; the other course is the course befitting a great people—a people looking forward to a great future—deliberation, and a jealous watchfulness to preserve intact the fundamental principles which conduce to

peace, order and good government. Which path will you take? Will you trust the destinies of Australia to the future people of Australia? Will you trust posterity to deal with the needs of the future times as they arise; or will you tie the hands of the generations which follow us? Will you not give the future people of Australia at least as much power as we claim ourselves—a power to vary the constitution, as you claim the power to make it? If you vote for this bill, I believe that you vote against a true and beneficial federation, which will come as surely as the day follows the night; if you vote against this bill, you vote for the better bill which must soon follow. Time and thought are on our side. I know we may be beaten in Victoria. That should not affect our conscientious votes—

"The fewer men, the greater share of honour."

If this bill became law, we shall have at least the consciousness of having done our duty; and we shall find ourselves absolved from responsibility for the evils which must arise. I have seen, the other day, a tree which, when a sapling, had an iron band put round it; the sapling grew, and the iron band stayed, unmoved, biting into the vitals of the tree; and the tree was deformed, distorted, stunted. The sapling is Australia; the iron band is this bill. Will you put the iron band around the sapling? If this bill does not become law, you will, in all probability, have an opportunity to vote for a greater bill, freed from the selfish elements of provincialism. But, in any case, remember that—

"Not failure, but low aim, is crime."

The Federation Forum.

At the request of the editor of the "Argus" newspaper, Mr. Higgins wrote, for publication in its columns, an article stating summarily his principal objections to the Commonwealth Bill as it left the Convention on the 16th March, 1898. This article was submitted by the editor to Mr. Trenwith, leader of the labour party; and his answer appeared, in parallel columns, in the same issue of the newspaper (6th May, 1898). Subsequently, Mr. Higgins dealt with Mr. Trenwith's answer in an article which appeared in the issue of 10th May, 1898 (*see post p. 57*).

The Federation Forum.

Argus, May 6th 1898.

MR. HIGGINS.

THE APPEAL.

In complying with the request of *The Argus* to state in a compendious form my principal reasons for urging the rejection of the bill drafted by the Federal Convention, I cannot but be conscious that most of what I say will have little weight with those who do not value democratic principles. There are many persons, I find, who ask only how the bill will immediately affect their pockets—whether it will increase their taxation, diminish their trade, enhance their advantages in competition, lower the value of their property, ensure them against loss in the case of hostile attack. When you complain that the bill interferes with the rule of the people—that is to say (as people must differ in opinions) with the rule of the majority—these gentlemen will tell you, "So much the better." Should you urge that this interference with the will of the people is by this bill to be rendered permanent, and incapable of amendment, they will answer, "And a good job, too." If you point out that the bill will permit a small minority of Australians to block legislation demanded by Australians generally, and still more effectively to prevent an adjustment

MR. TRENWITH.

THE APPEAL.

In undertaking to consider, and endeavouring to show, the insufficiency of the reasons presented by Mr. Higgins for objecting to the Commonwealth Bill, I cannot but remember that there are a number of persons who now, as in the past, are opposed to federation itself, and who are not opposing this bill as a means, but in consequence of the end to be achieved; who, from feelings of narrow provincialism, are afraid that the obliteration of the arbitrary geographical lines and the embarrassing and vexatious barriers that our position of disunion in the past has rendered necessary will in some unexplained way injure their personal interests. To such people I make no appeal; but there are a very much larger number of persons who deplore the restricted opportunities which disunion entails, and are moved by a patriotic desire to see these colonies acquire those opportunities for social and industrial development that can only be obtained by joining together in a bond of national union, and who will approach the consideration of this bill, not from the standpoint of whether it is perfect in every detail, or completely coin-

of the constitutional machinery to meet new conditions which we cannot now foresee, they remain unconcerned. They generally have in their mind's eye a bullock standing on the Riverina side of the Murray, waiting to cross without the thirty shillings penalty, or a portmanteau which is to be carried from the New South Wales to the Victorian carriage at Albury without the obnoxious examination by the officer of Customs. This species of federalist may as well leave this article unread. But I should like to reach the mind of the elector who is stirred by generous Australian sentiment—the man who sees that, though there are several colonies, the people are one—one in race, in language, in social conditions, in ideals—a people which, however, sundered in map-divisions called "colonies," finds in its largest interests solidarity and a necessity to work out in our remote continent a common destiny.

To this elector I should submit that there are two—or rather three—main problems in framing a federal scheme. One is to settle what subjects can best be dealt with by Australia, as a whole, and not separately, in the several colonies. The second is to provide machinery whereby Australian public opinion on those subjects may, after due deliberation, be carried into effect; and the third is to enable the Australian people to alter that machinery from time to time, as circumstances may require. I am convinced that the bill, as framed, fails in the solution of each of these three problems,

cides with their own opinions, but whether, on the whole, it furnishes an instrument of government by which the people of these colonies can with reasonable facility secure the legislative expression of their desires. To these I with confidence appeal, in the hope that I may be able to make clear some points about which they are now in doubt, and to remove difficulties by which they may be beset.

MR. HIGGINS.

and it fails because it treats them all in a provincial, as distinguished from a federal, spirit.

I.—SUBJECTS COMMITTED TO THE COMMONWEALTH.

RAILWAYS.

(a) Under this bill the railways are neither to be taken over by the Commonwealth, nor to be worked for the general good of Australia. There is a power given to the Commonwealth to purchase railways from any state, but, in the meantime, these great arteries of the continent are to be worked as if each colony had a separate arterial system. "Cut-throat rates," indeed, are stopped, if they are preferential or discriminating rates—preferring or discriminating between persons or goods. Now, this class of rates is Victoria's only weapon in the competition with New South Wales for the trade in Riverina. These rates are to cease, while the competitive differential, or long haulage, rates of the New South Wales railways—rates designed to attract trade from the nearer port, Melbourne, to the distant port, Sydney—cannot be interfered with at all. Sir George Turner seems to agree with Mr. Reid, Mr. Barton and Mr. Wise that this is the effect of the bill. He attributes the blame to Mr. Grant's clause (sec. 103). But, even if Mr. Grant's clause were not in the bill, there is nothing in the bill which would allow any interference with the competitive differential rates of New South Wales. This result the Convention did not intend; the majority of the Con-

MR. TRENWITH.

I.—SUBJECTS COMMITTED TO THE COMMONWEALTH.

RAILWAYS.

Let me take Mr. Higgins' objections in the order in which he has presented them:—

> "Under this bill the railways are neither to be taken over by the Commonwealth nor to be worked for the general good of Australia."

There are obvious reasons why the railways in Australia should not be handed over at once to the central Government. In consequence of the large area and scattered population of these colonies, it is necessary at times to make railways without regard to their immediately paying character from the book-keeping point of view, but rather that they should pay indirectly by developing country that otherwise would not be developed, and enabling people to obtain a livelihood upon the soil who otherwise would not be able to do so. To hand the railways over to a central Government, far removed from many of the parts where development is necessary, would probably be to very materially reduce, if not entirely stop, that class of railway construction.

There is, however, in this bill a provision that the railways shall not be worked in a manner prejudicial to the general interests. It is provided in clauses 101 to 103 that rates or fares that discriminate unreasonably or unjustly to another

MR. HIGGINS.

vention were with the Victorians as to the justice of their claim. But Sir George Turner's clause (sec. 101, first part), was unfortunate in the language used, and I have no doubt that at any new convention the matter would be put right.

RIVERS.

(b) The bill does not permit intercolonial rivers—such as the great Murray system, with its watershed extending over Queensland, New South Wales, Victoria, and South Australia—to the Federal Parliament. The Parliament is not empowered to adjust from time to time the riparian claims of the colonies interested. This bill, while enabling the Parliament to deal with the navigation of rivers, forbids it to abridge the "rights" of a state "or of the residents

MR. TRENWITH.

state cannot be permitted. This Mr. Higgins admits himself, when he says:—"Cut-throat rates indeed are stopped if they are preferential or discriminating rates—preferring or discriminating between persons or goods."

Then he goes on:—"Now, this class of rate is Victoria's only weapon in the competition with New South Wales for the trade in Riverina." The answer to that is that cut-throat rates on the part of Victoria were only imposed after cut-throat rates had been adopted by New South Wales, and if, as the bill provides, cut-throat rates of an unreasonable character are prevented in New South Wales, Victoria will be able to obtain a very large portion of the Riverina trade—much larger than at present—at rates that will be remunerative, instead of a loss to her railways. Furthermore, the bill provides that, as experience dictates the wisdom of taking over the railways from the states, there will be full power in the Federal Parliament to do so.

RIVERS.

"The bill does not commit intercolonial rivers . . . to the Federal Parliament."

It will be seen by reference to clauses 97 and 99 of the bill, that this statement is incorrect. The first of these clauses gives the Federal Parliament power over navigation of all rivers, and clause 99 throws upon the Federal Parliament the duty of deciding what is the reasonable use for irrigation and conservation purposes of the waters of such rivers. Thus the

MR. HIGGINS.

therein" to the "reasonable" use of the waters for conservation or irrigation. No one knows what the "reasonable use" covers; but this much is clear, that the power of the Australian Parliament, in regard to a matter so important to Australia, is to be checked for ever —or until the constitution is amended—by certain unknown rights of states and their residents. What a prospect for the law courts!

RETURNING SURPLUS REVENUE.

(c) According to the bill, any surplus revenue raised by the Commonwealth, and not applied to Commonwealth purposes, is for about seven years to be divided between the states, according to the amount of revenue raised in them respectively, less their respective shares (based on population) of the federal expenditure; and after the seven years there is to be (as in Canada) a wretched scramble, from time to time renewed, as to the distribution of any surplus. If we were to wait for a year or two, and give the statists time to adjust and reconcile their figures, making allowances for the temporary effects of state borrowings, and for the changes in imports which a common seaboard tariff will effect, I feel sure that the broad federal method would be adopted of prescribing a division of the surplus in proportion to the number of the people in the several colonies. During the seven years, be it noted, the nuisance of border inspection and border sta-

MR. TRENWITH.

Parliament is given power to make laws not only for the control of navigation, but for the control of the waters for all other purposes. At present the position of the Murray and the Darling, and their tributaries, is that New South Wales has absolute control over the whole length of the Murray till it reaches the South Australian border, but immediately upon the establishment of the Federal Parliament, this control by New South Wales will absolutely cease, and be handed over to the people of the Commonwealth.

RETURNING SURPLUS REVENUE.

With respect to the disposal of the surplus revenue of the Commonwealth, Mr. Higgins complains that the system adopted by the bill may lead, as in Canada, to a wretched scramble, from time to time renewed, as to the distribution of the surplus; and he says that if we were to wait for a few years, and to give the statists time to adjust and reconcile their figures, we might have a very much more satisfactory scheme. To that I would reply that it will be impossible, however long we delay, for the statists to obtain any reliable basis for their calculations in connection with circumstances that have not yet arisen, and that as any calculation they make before federation is actually in operation must be based on conjecture, those calculations themselves must be unreliable. The bill has adopted the commonsense plan of creating, during the period of transition and while the disturbance created by the alteration

MR. HIGGINS.

tistics of goods crossing has to continue, and it has to continue until—if ever—the per capita system be adopted.

ABOLITION OF BORDER DUTIES.

(d) Intercolonial duties must go, and it is well. But there is a great deal of good sense in Mr. M'Lean's suggestion that such a duty as the stock tax should be taken off by successive steps within five years, and not at one jump. However beneficial the change may be, I do not like that it should come with violent suddenness. People who have been leaning on the stock tax should be allowed to adjust themselves to the new conditions. What signify five years in the life of a nation?

BONUSES.

(e) The bill gives to the Federal Parliament and takes from the states the power to give bounties on the production or export of goods. The object is to prevent any violation of the cardinal principle of free trade between the

MR. TRENWITH.

of Customs duties was settling down, a debtor and creditor account, by which the citizens of each state have returned to them exactly what they have paid in Customs duties, less their share of the federal expenditure; and after that period it has imposed upon the Federal Parliament the duty of deciding the basis upon which the surplus is to be distributed thereafter, a duty which it will be able to perform with all the facts of actual experience at its disposal.

ABOLITION OF BORDER DUTIES.

> "There is a great deal of good sense in Mr. M'Lean's suggestion that such a duty as the stock tax should be taken off by successive steps within five years, and not at one jump."

However reasonable that contention may be on the part of Mr. M'Lean, it is obviously one that ought not to be made at this stage by Mr. Higgins, because Mr. Higgins was a member of the Federal Convention, where he might have had that provision introduced, but where he took no steps whatever to secure that end. Personally, I feel that to make any distinction of that character would lead to endless complications, and would seriously increase the difficulties of union.

BONUSES.

Mr. Higgins's next complaint is that the bill gives to the Federal Parliament, and takes from the states, the power to give bonuses on the production or export of goods, and thereby, as he suggests, intensifies the difficulty of de-

MR. HIGGINS.

colonies. This reason would not apply to bounties or aids to mining for gold and other metals, and, on my motion at Adelaide, these were allowed. But why should not any state be free to encourage novel industries by bounties so long as freedom of trade be not violated? The bill, however, prohibits a state from giving any bounty except with the sanction of both houses of the Federal Parliament. It would have been disastrous if Victoria had had to wait for resolutions of the Federal Parliament before she started the butter bonus; and a bonus for oil plants, or any novel industry confined to any one state, ought not to be made so difficult to obtain. This question surely needs to be reconsidered.

II.—MACHINERY FOR GIVING EFFECT TO PUBLIC OPINION.

HOUSE OF REPRESENTATIVES.

(a) The House of Representatives, which is supposed to be based on population, is not so based. It is to start with one member for about 53,000 people, except that Tasmania and West Australia are each to have two more members than their share. The 1891 bill and

MR. TRENWITH.

veloping industries that are peculiar to any portion of the Commonwealth, because it is necessary, and he thinks objectionably necessary, to obtain the consent of the Federal Parliament before such bounties can be given. As a matter of fact, we have exactly the same principle working in connection with the relations of our central and local governments. Our municipal bodies work under an act of Parliament, in which they are given definite powers, and they frequently have to ask Parliament for an extension of those powers in connection with the use of public property, and the right to obtain loans, but whenever they make such an appeal it is notorious that, as a rule, it is granted by Parliament in a few minutes. For instance, in the last session of our Parliament half a score of such bills were passed through within an hour. And it is reasonable to assume that any request to give a bonus that does not derogate from that essential principle of federation, freedom of intercourse between the colonies, could be obtained with equal facility from the Federal Parliament.

II.—MACHINERY FOR GIVING EFFECT TO PUBLIC OPINION.

HOUSE OF REPRESENTATIVES.

"The House of Representatives, which is supposed to be based on population, is not so based."

The objection here taken is to the provision for a fixed ratio between the numbers of the two houses. I agree with Mr. Higgins that this is

MR. HIGGINS.

the United States Constitution were more liberal, for they allowed one member for every 30,000. Nor is the number of members to increase as population increases; it is to depend on the number of Senators, and to be (as nearly as possible) double that number. When Australia has 70,000,000 of people, it cannot have more than 64 members of the House of Representatives, unless the number of Senators be increased pari passu! This curious device is, I believe, without precedent, and will tend strongly to perpetuate the force of provincialism, as well as of toryism, in politics.

THE SENATE.

(b) That each original state shall have six Senators, no matter what is, or may hereafter be, its population, is a dangerous violation of the principle of majority rule—a principle which is based on fundamental physical facts. The majority are stronger than the minority, and it is better to count heads than to break them. As great old John Locke said 200 years ago, ("Civil Government," 241), speaking of any political community, "It, being one body, must move one way. It is necessary that the body should move that way whither the greater force carries it, which is the consent of the majority." The object of the principle is to get peace, order, and good government; to make private and particular interests subordinate to the general interest; to make the laws of any nation a true reflex of its current opinions and current

MR. TRENWITH.

not a desirable provision, but, on the other hand, I see no great prospect of immediate inconvenience from it. And Mr. Higgins is wrong in assuming that there is no precedent for this arrangement. In our own constitution we have acknowledged by our action the wisdom and justice of it, for when some years ago we increased the number of the members of our Legislative Assembly from 86 to 95, we also increased the members of the Legislative Council from 42 to 48. Thus, our representative Assembly is rather less than twice as numerous as our chamber of review.

THE SENATE.

> "That each original state shall have six senators, no matter what is or may hereafter be its population, is a dangerous violation of the principle of majority rule."

Here again in some measure I agree with Mr. Higgins, but I differ from him entirely with regard to the magnitude of the fault which he indicates. Equal representation was claimed by the small states as a protection to them against possible absorption by the large states. Our study of federal history leads to the conclusion that there is considerable justification for the contention that equal representation in the Senate is a sine qua non of federation, and experience teaches us that, though possibly illogical, it is not necessarily dangerous. The reference by Mr. Higgins to the effects of the American Senate on American history is beside the

MR. HIGGINS.

culture. The only permissible object of any House in a democracy is to get public opinion truly represented and voiced; and this cannot be done when you find that in Australian subjects an Australian in Coolgardie is to have nine times the voting power for the Senate that his brother Australian has in Broken Hill; and he may hereafter have twenty, fifty times the voting power. We might as well provide for a house of municipalities in Victoria, in which the city of Melbourne should have the same representation as the shire of Gum-tree Flat. We may judge from the utterances of such representatives of the working classes as Mr. M'Gregor, M.L.C., and Mr. Hutchison, M.L.A., of South Australia, that there is no general demand in the less populous states for such an anomalous system of representation. The whole theory of a "states House" is the same in essence as that of the Tories in 1832, for they contended that the House of Commons was not meant to represent people, but communities or interests invited by the Sovereign to consult with him. Even at the start one-fifth of the Australian people, paying one-fifth of the taxes, will have three-fifths of the power in the Senate. The United States have discovered the evils of such a system. It was the cause of the unjust war with Mexico, of the growth of the slave-power, of the great civil war (see Channing's History, 444). It was the cause last year of the rejection by the United States of the noble arbitration treaty submitted by England,

MR. TRENWITH.

question, because in reasoning by analogy it is necessary to reason from circumstances that in essential particulars are parallel, and the constitution of the American Senate and that of the Senate proposed by this Commonwealth Bill are entirely dissimilar. While the Senate we propose to create is to be elected by the whole people, and is capable of dissolution at the will of the Executive Government, the American Senate is elected by the State Legislatures, and cannot be dissolved by any means. But an example more pertinent is contained in the Swiss Constitution, where exactly the same principle of equal representation prevails, with nearly the same conditions of election, and there is no evidence of any evil having arisen from it, and the Swiss people, though notoriously the most politically independent and determinedly self-govening people in the world, have persistently refused to federate upon any other conditions. While it is true that this provision does give to the voter in Coolgardie eight times as much voting power in one House as a voter in Broken Hill, it is true also that it gives to the democratic voter in Coolgardie eight times as much voting power equally with the ultra-Tory voter in Coolgardie, and thus in the conflict of parties, which is the only conflict which is reasonably likely to occur in the Federal Parliament, as in all other parliaments with which we are acquainted, the balance of parties will be very little influenced by this circumstance.

MR. HIGGINS.

and approved by the great masses of people of all parties in the United States (see "New England Magazine," June, 1897). But the United States have no power to change the system; and, although in Australia the evil results will be intensified, the states being so few, this bill makes a change impossible, however much some states may increase and other states dwindle in population. The system is out-and-out provincialism. As Ananias kept back part of the gift which he affected to make to the apostles' fund, so the states keep half of the powers which they affect to commit to the federation.

ONE MAN ONE VOTE.

(c) The bill does not provide for one man one vote, but only for one elector one vote. In some colonies the qualifications and the machinery for registration of electors are less liberal than in others, and yet the qualification of electors in each colony will affect the character of the laws made for all Australians.

MR. TRENWITH.

ONE MAN ONE VOTE.

"The bill does not provide for one man one vote, but only for one elector one vote."

Readers of the bill will see that it not only provides for one man one vote, but that it provides for one adult one vote so far as the colony of South Australia is concerned, and it provides for one voter one vote in the colonies where the franchise is not so wide, But it further provides that Parliament may make a uniform franchise, and clause 41 provides that no citizen who has or who shall acquire a vote in any of the states can be deprived of the right to vote by the Federal Parliament. Thus, when the Federal Parliament comes to make a uniform franchise, it must make it as wide as the widest existing franchise in any of the colonies, and when we remember the fact that Victoria, in the house elected on the franchise upon which both these federal houses will be

MR. HIGGINS.

RESPONSIBLE GOVERNMENT.

(d) The bill does not even give us responsible government resting on the House of Representatives. It is well known that responsible government depends on one of the Houses having a distinct superiority in money matters. Now, it is true that the House of Representatives is to have the sole power to originate taxation bills, and bills appropriating moneys "for the ordinary annual services of the Government;" and it is true that the bill professes to take from the Senate the power to amend money bills. But having regard to the superior tenure by which the senators are to hold their seats, to the superior prestige of the senators arising from the fact that they are elected by a whole colony, and to the obligation put upon the House of

MR. TRENWITH.

elected, has repeatedly declared in favour of manhood suffrage, and once at least emphatically in favour of adult suffrage; that New South Wales has achieved complete manhood suffrage, and has a large majority of its people in favour of adult suffrage; and that South Australia has already achieved adult suffrage, we are as certain as we can beforehand be certain of anything that the first Federal Parliament will be elected with both houses pledged to introduce a uniform franchise providing for adult suffrage. Thus, not only have we a provision for the most liberal franchise possible in one of the colonies, but the assurance in the near future of the most liberal franchise possible in all the colonies.

RESPONSIBLE GOVERNMENT.

"The bill does not even give us responsible government resting on the House of Representatives."

There are two factors necessary to the achievement of a responsible government. One is absolute control of the Representative House of Parliament by the people; the other is absolute control of the Executive by that House. This bill provides, as I have already shown, that both Houses of Parliament must be absolutely under the control of the people, and that the Executive must be absolutely under the control of the House of Representatives, because it gives to that House the sole right to initiate bills for the raising or expenditure of money; and should at any time the Executive become out of accord

MR. HIGGINS.

Representatives to devise some means whereby money may be found to meet the ordinary needs of the Government, there is little doubt that the sole power to originate money bills will have the same curious result in Australia as in the United States, of enabling the Senate to have the chief power in financial matters (see "Boutmy," 81). Moreover, the power to "suggest" amendments given to the Senate is just the same as a power to propose amendments. The only difference is in name. The Senate can "suggest" amendments to any money bill, not once, but as often as it likes; and the only effect of the difference in verbiage is that we shall have continual disputes between the two Houses as to the form of messages which are interchanged. Who is to say what are the "ordinary annual services of the Government?" Nothing can be more preposterous than equality of powers as to money bills as between the "States' House" and the "Peoples' House"—the taxpayers' House; for, as Mr. Reid pointed out, the states do not pay taxes equally. It will be still more absurd to find the Senate with even more control over the money of the taxpayers than the House of the taxpayers, and becoming (as Sir Richard Baker prophesies) "the pivot on which the whole federal constitution revolves."

MR. TRENWITH.

with the Representative Chamber, it is within the power of that Chamber to at once bring the Executive to a standstill by refusing to grant supplies. Mr. Higgins knows, and all students of history know, that it was by this power, and this power alone, that the people of England, through their representatives in the Commons, have been enabled to wring first from the King, and subsequently from the Lords, absolute control over the raising and expenditure of public money, and over all the executive functions of government. If in Great Britain, with the extremely restricted franchise of the past, and the comparatively restricted franchise of the present, the English people have been able thus to secure responsible government, how can it be said that, with the extended franchise and the perfect control of our Parliament provided in this bill, we shall not have responsible government?

Mr. Higgins declares that the power to suggest amendments in money bills given to the Senate is equal to the power to make amendments, and he adds:—"There is little doubt that the sole power to originate money bills will have the same curious result in Australia as in the United States of enabling the Senate to have the chief power in financial matters." Here, again, Mr. Higgins proposes to reason from circumstances in connection with which there is no possible analogy. In America the Senate is endowed by the Constitution with the right to amend, as well as to reject, money bills, and is given, in

MR. HIGGINS.

MR. TRENWITH.

conjunction with the President, the sole control of the Executive; while here the Senate is to be precluded from amending money bills, and is to have no control whatever over the Executive. In addition to the arguments deducible by reasoning from common sense in this connection, we are, fortunately, able to call to our aid the indisputable logic of facts, as presented in the neighbouring colony of South Australia. For years past the South Australian Upper House has had the power of suggestion in connection with money bills, and yet the South Australian Executive is notoriously the most progressive and independent in any of the colonies. The Parliaments in South Australia are much briefer in duration, and the people have more frequent opportunities of expressing their will in connection with legislative matters.

DIFFERENCES BETWEEN THE HOUSES.

(e) The cumbrous provision for solving differences between the two Houses does not secure finality, and can hardly ever be, in practice, applied to money bills. Money bills will not wait; and the Ministry will generally be forced to yield to the Senate in a money dispute, as the Turner Government had to yield to the Legislative Council in 1895 owing to the urgency of financial needs.

DIFFERENCES BETWEEN THE HOUSES.

Mr. Higgins next complains that what he calls the cumbrous provision of solving differences between the two houses does not secure finality, and inferentially he implies that it is of little use. Here, also, we have the teaching of experience in the colony of South Australia to guide us. For 17 years there has existed in South Australia the power to dissolve the Legislative Council in the event of a dispute between it and the House of Assembly. During that period South Australia has advanced in liberal legislation in a degree unequalled in any of the other colonies, and has achieved such

MR. HIGGINS.

MR. TRENWITH.

democratic triumphs as adult suffrage, a provision enabling persons whose business renders it necessary for them to be absent on polling day to record their votes, a state bank, a more effective land tax than exists in any other colony, and other advanced measures of legislation. These reforms have resulted from the existence of the provision that Mr. Higgins complains of, although it has never been necessary to call it into active operation, It has, in fact, been a reason-producing, dormant power, very much in the same way as the power to create additional peers is in England. And Mr. Higgins, who mentions the reform period of 1832, will remember how that dormant power was effective in compelling the arrogant and obstructive Lords to reluctantly give effect to the people's will in connection with a large extension of the franchise.

THE REFERENDUM.

(f) Not only is there no provision for a referendum to the people when the two Houses repeatedly differ on a critical measure, but there is no reasonable possibility of the constitution being ever amended so as to secure the referendum. For the referendum is inconsistent with equal representation of the states in the Senate, as the Victorian Ministers pointed out when voting against the referendum in Sydney. What, it will be said, is the good of a states' House to check the peoples' House if the people are to be the umpire ?

THE REFERENDUM.

"Not only is there no provision for a referendum to the people, when the two houses repeatedly differ on a critical measure, but there is no reasonable possibility of the Constitution being ever amended so as to secure the referendum."

It should be scarcely necessary to point out that the double dissolution just referred to is, in fact, a referendum, though not as complete as I and many others would desire. But Mr. Higgins, in saying that the referendum is inconsistent, and, therefore, cannot exist in conjunction with equal represen-

MR. HIGGINS.

INTER-STATE COMMISSION.

(g) Any attentive reader will find that the provisions as to the Inter-State Commission have not been sufficiently considered. Apart from the well-grounded dislike of irresponsible boards, the provisions will lead to much difficulty and quarrelling, not only as to the personnel of the commission, and as to the working out of the problems entrusted to it, but as to the relative powers of the commission, of the High Court, and of Parliament.

III.—AMENDMENTS OF MACHINERY.

THE SENATE.

(a) Equal representation of the

MR. TRENWITH.

tion, has ignored the Swiss instance in that connection. There, as he knows, the cantons have equal representation in the second chamber, and the people have the direct referendum in connection with ordinary legislative matters. And with the franchise that we are sure to obtain in the near future, it appears to me absolutely certain that the people will, if they desire, obtain a referendum under this Constitution.

INTER-STATE COMMISSION.

Mr. Higgins says that the powers of the Inter-state Commission are so vaguely defined that they may conflict with those of Parliament or of the High Court. The answer to that is that clause 100 of the bill provides—

> "There shall be an Inter-state Commission, with such powers of adjudication and administration as the Parliament deems necessary, for the execution and maintenance within the Commonwealth of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder."

It will thus be seen that it is in the hands of the Parliament itself to define what are to be the powers of administration aud adjudication of the Inter-state Commission, and it is unreasonable to assume that Parliament will prescribe such powers as would in any way conflict with itself or with the High Court.

III.—AMENDMENTS OF MACHINERY.

THE SENATE.

"Equal representation of the

MR. HIGGINS.

original states in the Senate can never be altered, no matter how much one colony may increase and another decrease in population. If there should be 20 states, and if 19 contain millions each, and the twentieth has become an almost deserted mullock-heap, the twentieth cannot have its power in the Senate diminished without its consent! (Sec. 127, last clause). Moreover, if a new state should come into the federation with a very small population, and be allowed two or three senators, and if its population should increase till it became the most populous state in the union, it could not get even six senators without the consent of every one of the other states; for that would be to diminish their proportionate representation without their consent. The evils of having this provision of the constitution so rigid has been pointed out by many constitutioual writers, and notably by Burgess (I., 151-3; II., 49). It is a distinct invitation to powers behind the constitution to interfere; it is an incentive to revolution, to violence, to anarchy,

AMENDMENTS OF THE CONSTITUTION.

(b) Changes in the ordinary machinery of the constitution can be blocked by a small minority. For instance, owing to an omission in the final drafting (now, I believe, generally admitted), a litigant is allowed to appeal direct from a state

MR. TRENWITH.

original states in the Senate can never be altered, no matter how much one colony may increase and another decrease in population."

I agree with Mr. Higgins that it would be difficult to alter this provision; but I think, in declaring it to be impossible, he altogether unwisely and unnecessarily enters into the region of prophecy. Take the instance he himself assumes;—Twenty states, nineteen of which have millions of population each, and one which has become "almost a deserted mullock-heap." Is it not certain that nineteen states so populated, finding themselves resisted by one state of the character suggested, would be so annoyed that in all matters of legislation, over which they would have absolute control, they would, from mere considerations of pique, ignore the interests of this one state, and compel it, if only in self-defence, to fall in with the wishes of its numerous neighbours? But even if such were not the case, we would still have power to appeal to the Imperial authorities for an alteration of the constitution—a power that would most certainly be exercised in a case so extreme as that which Mr. Higgins has indicated.

AMENDMENTS OF THE CONSTITUTION.

"Changes in the ordinary machinery of the constitution can be blocked by a small minority."

This contention of Mr. Higgins' is correct in so far that it is barely possible that three small states uniting against two large ones

MR. HIGGINS.

court to the Privy Council, ignoring the Federal High Court. It is possible that some defect may be found in the section framed to safeguard the rights of public servants in the transferred departments. The Federal Parliament will have no power to rectify such errors, however apparent. To rectify them there must be not only an absolute majority of the members of each House, but a general—and very costly—poll of electors throughout Australia; and unless a majority of the states, as well as a majority of the people, approve of the amendment, the error cannot be rectified. The same difficulty would stand in the way of any proposal to make the intercolonial rivers an Australian concern, or to check unfair differential rates in the New South Wales railways, or to define more accurately the powers of the Inter-State Commission. It is easy to show how five out of every six voters in Australia might say yes to the amendment, and yet the amendment be lost, owing to small majorities against it in the less populous states.

(c) The so-called "provision for settling deadlocks" cannot be brought into play for the purpose of settling disputes between the two Houses as to amendments of the constitution. It only applies to disputes as to legislation under the constitution, where absolute majorities are not required in each House, and where the question has not to be submitted to the electors.

MR. TRENWITH.

might successfully resist a desirable alteration of the constitution. But this is so extremely improbable as to be practically impossible, because to render it possible you have to assume, for instance, that ultra-democratic South Australia would unite with conservative Tasmania and Western Australia in order to resist some alteration of the constitution desired by comparatively liberal Victoria and New South Wales. That this is altogether an unreasonable assumption I think will at once be admitted. However, as Mr. Higgins assumes bare possibilities, however improbable, in order to point out objections to the bill as it is, may I be permitted to assume a not improbable objection to the bill as he proposes it should be? If, as he desires, a bare majority of the people, without regard to the states, could alter the constitution, and one colony became so populous as to outnumber in population all the others, his proposal would enable that colony, by mere weight of numbers, to so alter the constitution as to abolish the provision by which the central Government has control only over those matters which are submitted to it by the states, and to provide that the central Parliament could take control of all matters it did not choose to leave in the power of the states. Thus we should have a return to that form of government from which, within the memory of many now living, we Victorians struggled to free ourselves when we obtained separation from New South Wales. Would Victoria, or would

MR. HIGGINS.

MR. TRENWITH.

any of the less populous states, enter into the federal compact with such a possibility before them? I think the answer must be emphatically No.

The Federal Parliament, Mr. Higgins complains, will have no power to alter the constitution. It will require an absolute majority of both houses, and, as he says, "a general and very costly poll of electors throughout Australia." Here it will be observed that Mr. Higgins is really deploring the cumbrous and costly character of the referendum in so important a question as an alteration of the constitution, while he demands it as a means of settling ordinary differences between the two houses—an inconsistency which I leave Mr. Higgins himself to reconcile.

CONCLUSION.

I may add that, as one whose interests are bound up with Australia, as a member of the Victorian Parliament, and as a member of the late Federal Convention, it has been with the keenest regret that I have felt constrained by my duty to oppose this bill. I should have accepted it with many defects if it were more flexible, more capable of adjustment to meet new conditions as they arise; and I know full well that many votes will be cast for the bill in the mistaken belief that if we once "federate" we can put right afterwards what we find to be wrong. It may be noticed that I do not press against the bill the point that Victoria will for some years suffer a considerable deficiency in revenue—Sir George Turner

CONCLUSION.

In answer to Mr. Higgins' general contention that this Constitution is practically incapable of alteration, I would refer to the fact that under the Swiss Constitution, in which exactly the same conditions are provided with reference to alteration, in the short space of time between 1874 and 1881 there were three distinct alterations of the Constitution, and during the whole period from 1874 up to the present time there have been six or seven such amendments. Therefore, if Switzerland, with exactly the same provisions, can so readily alter its Constitution, it is obvious that the statement that this Constitution cannot be altered is incorrect.

Having met, however inefficiently, but at least fairly, the

MR. HIGGINS.

estimates it at £500,000 a year. In these hard times Victoria can ill afford such a loss; but I should think it a small price to pay for a sound system of federation. What are the consequences of waiting and trying again? Australians would not be worthy of nationhood if they were to throw up all hopes of federation because they have failed in the first or second attempt. But there is no fear of any such abandonment. These rebuffs are

> "Naught else
> But the protractive trials of great Jove
> To find persistive constancy in men."

We all, I think, recognise now how well it was that the 1891 bill was rejected. It would have meant the financial ruin of Victoria, and the permanent cramping of Australian liberties. Yet in 1891 Mr. Munro, the then Premier, said in Parliament, "I say now that I feel perfectly satisfied that if we accept the bill as it stands we will get the very best form of federation which we could ever get." The same tone pervaded nearly all the speeches. Mr. Deakin eloquently reminded his hearers of the "tide in the affairs of men" which must be "taken at the flood." He warned them of the aggressions of European nations in the Pacific, of the threatened influx of Chinamen, of the opportunity of union which would never return. These prophecies were, like most prophecies, mistaken. Again are we at the "parting of the ways." One road is the road of passion, of impatience, of hysterical impulse; the other is the road befitting a people destined to permanent greatness, the road of deliberation, of

MR. TRENWITH.

objections presented by Mr. Higgins, I desire to say now, as one who for over 20 years has had to run the gauntlet of the most merciless, and often brutal and unfair, criticism because of my advocacy of what I believe to be proper methods of government, that if federation presented no material advantages, if the attainment of national manhood under a bond of union were not desirable on the part of these infant colonies, and if our social and industrial development were not to be advanced thereby, I should still recommend the bill because of the immense strides of a constitutional character in a democratic direction that it makes.

I believe that this bill, providing as it does for two houses of Parliament, demanding no qualifications for membership except those of manhood, integrity, and intelligence, and no restriction of voters except that of adult citizenship, and with that principle which has been described as the keystone of the democratic arch—payment of members—furnishes an instrument of government by which the people of Australia can achieve whatever they desire in legislative matters. I believe that the Constitution contains within itself the machinery by which it can be moulded into any form that the interests of the future may demand, and that it is, in short, the most democratic and the most elastic Federal Constitution in the world.

W. A. TRENWITH.

forethought, of jealous adherence to the fundamental principles which conduce to peace, order, and good government. The pressure of our real exigencies will force the question of federation on us until it is solved. Delay is a bitter disappointment to us; but future generations will thank us for the delay. We shall soon have another opportunity of voting for a bill untainted by the selfish elements of provincialism; a bill under which the people of all these colonies, recognising the solidarity of their interests in matters Australian, will commit those interests confidently to the good sense and justice of the majority of the Australian people, and will allow the future people of Australia as much power to vary the constitution as we claim power to make it.

HY. B. HIGGINS.

THE FEDERATION FORUM.

REJOINDER BY MR. HIGGINS.

Argus, May 10th, 1898.

Sir,—I willingly concede that there is some humour, as well as tactical adroitness, shown in your selection of Mr. Trenwith to reply to my criticism of the Convention Bill; and some, I know, will rub their hands with glee at the irony of the situation —my Pegasus coming to perform before the public in hobbles, in the shape of comments made by the leader of the Labour party. However, there is nothing unfair in the device, and it really will suit my purpose better than any other course. For the discussion between Mr. Trenwith and myself will bring out more emphatically the points on which I most insist, and will enable me to reach those minds which I most want to reach. If Mr. Trenwith, with all his high character and capacity, cannot satisfy the public that the bill is not narrow and provincial, undemocratic and unchangeable, no one can. His arguments will also reassure many of his old comrades, who have been inclined—unjustly as I think—to accuse him of disloyalty to his principles; for the worst that he can now be accused of is a misapprehension of certain of the clauses of the bill, and of certain arguments of those who are opposed to his views.

I desire to refer to one of Mr. Trenwith's last arguments first, because it deals with that objection which will turn so many thousand votes—the rigidity of the constitution. Mr. Trenwith does not deny that a small minority of the Australian people could block amendments desired by the great majority; but he says that if a majority of the people, without the consent of a majority of the states, could alter the constitution, a colony which becomes very populous could, by mere weight of numbers, "so alter the constitution as to abolish the provision by which the central Government has control only over those matters which are submitted to it by the states, and to provide that the central Parliament could take control of all matters it did not choose to leave in the power of the states." In short, he means that a very populous state could make a subject federal which other states do not want to be federal, e.g., education. But if he looked more

closely at my objection he would see that it applied only to the power of the Senate and the provincial forces to block changes in the machinery for dealing with the subjects committed to the Commonwealth. The distinction is surely clear between the subjects which are to be treated as Australian and the machinery for dealing with those subjects. What have the states, as states, to do with subjects which they admit should be treated on national, Australian lines? I urged this view in Melbourne, and Mr. Glynn tabled an amendment of the bill on the same lines. But we received no help or encouragement; and our Victorian Ministers and Mr. Trenwith voted even for the clause making equal representation unchangeable, except with the consent of the state which is over-represented.

Again, Mr. Trenwith misunderstands my reference to the cost of a referendum in the case of a proposal to change the constitution. I referred to the great cost, as it would operate to deter Federal Ministers from proposing useful amendments—even amendments for which absolute majorities of both Houses could be easily obtained.

Mr. Trenwith also thinks that I am answered by his statement that under the Swiss constitution "exactly the same conditions" are provided with regard to changes in the constitution. Now (1) they are not the same conditions. I think that I have shown this in the course of a late controversy with Mr. Deakin in the columns of another journal, to which I may refer Mr. Trenwith. In Switzerland the national forces are able to force the hand of the Federal Parliament, and to compel the Parliament to frame an amendment on the lines required by the mass vote. (2) In a country with 22 or more cantons the obstruction of a "crank" canton can more easily be counteracted than in a country which starts with only five or six colonies. (3) In Switzerland the divergence of the cantons in race, in language, in religion, in social conditions, in history, rendered impossible so close a union as that which is requisite in Australia. (4) We should try to make the Australian constitution an improvement on the Swiss. The Swiss was originated in 1848, on the model of the United States, before the states' rights theory was discarded by constitutional thinkers on federation.

Now, to go back to the subjects for the Australian Parliament. As to the railways, Mr. Trenwith asserts that the bill *provides for the prevention of "cut-throat" rates of an unreasonable character in New South Wales.* I gave it as my opinion that no rates can be prohibited unless they are preferential or discriminating, such as the Victorian rates under which a lower charge is made for the carriage of New South Wales products than Victorian products, say from Echuca to Melbourne; and that the long haulage rates of New South Wales, fixed for the

purpose of attracting the Riverina and Darling trade to Sydney, cannot be prevented. My opinion coincides with that of Mr. Reid, Mr. Barton, Mr. Wise, and (as I infer) Sir George Turner. What support has Mr. Trenwith for his assertion? I am willing to submit the point to any competent and disinterested arbiter.

As to the intercolonial rivers, Mr. Trenwith asserts that "clause 99 throws upon the Federal Parliament the duty of deciding what is the reasonable use for irrigation and conservation purposes." This is a clear mistake. Section 99 forbids the Commonwealth to abridge the right of a state, or of the residents therein, to the reasonable use of the waters for irrigation, etc. But the Commonwealth is nowhere given the power to say what is reasonable use. If Tommy be forbidden to deprive his sister of the reasonable use of the jam-pot, that does not give Tommy the right to decide, at his own sweet will, what is the reasonable use.

As to the distribution of the surplus revenue, Mr. Trenwith does not deal with the difficulty which will from time to time arise after the seven years of bookkeeping and border inspection and border statistics. Sir George Turner predicts a wretched scramble and log-rolling, and probably a combination of the smaller states against the larger to secure a better share of the surplus; and it is quite possible that the anti-federal system of bookkeeping, once started, will be perpetuated.

As to border duties, Mr. Trenwith does not show any specific grounds of objection to Mr. M'Lean's suggestion that such duties as the stock tax should be reduced gradually, by successive steps, within five years; but he says that I ought not to raise the contention, because at the Convention I took no steps whatever to secure Mr. M'Lean's purpose. This would be no answer, even if it were true. But it is not true. I spoke on the point in Sydney (Sydney Debates, pp. 135-136), but I received no support on the subject, even from the Victorian Ministers. In Melbourne also I did my best to ascertain whether such a sliding scale had any chance of acceptance, especially when a sliding scale was allowed for the West Australian intercolonial duties. But I found that it would be futile for me—a non-official member—to move any amendment on the subject.

As to bonuses, I still think that to obtain the consent of both houses of the Federal Parliament to the granting of a bonus by a state is too cumbrous, too dilatory, and too difficult a procedure. I carried a clause in Melbourne to the effect that any state might give a bonus with the consent of the Governor-General-in-Council (in effect, the Ministry of the Commonwealth), provided that the bonus do not derogate from freedom of trade between the colonies. But, in deference to our Premier, who preferred

the clause as it now stands, I consented to the withdrawal of my clause.

As for the House of Representatives, Mr. Trenwith agrees that the fixed ratio, 2 to 1, as between the members of the house and the senators, is not desirable, but he sees no "immediate inconvenience" from it. That is just the point. Mr. Trenwith and other advocates of the bill look at immediate results, and not sufficiently at ulterior results, and at the difficulty of making changes. There is no such ratio in the United States, or in any other federal constitution. It is true that in Victoria there has been such a ratio preserved between the Assembly and the Council; but it is not made a rigid rule of the constitution, and in a federation it is exceptionally pernicious, because it tends strongly to perpetuate the force of provincialism, as well as of Toryism, in politics.

As for equal representation of the states in the senate, Mr. Trenwith agrees with me that "in some measure" it is wrong. But he says it was claimed by the small states as a protection against possible absorption by the large states. I want to know when it was so claimed, and how absorption is possible. Equal representation was, unfortunately, treated from the start as if it were a necessary part of any federal scheme, although the best recent constitutional writers regard it as part of a discarded theory. Walter Bagehot, one of the clearest thinkers on politics, says (English Constitution, p. 97):—

"It is said that there must be in a federal government some institution, some authority, some body possessing a veto, in in which separate states composing the confederation are all equal. I confess this doctrine has, to me, no self-evidence, and it is assumed, but not proved."

Dicey (Law of the Constitution, 4th ed., 135) absolutely omits the states' house from his "leading characteristics of federalism." Freeman omits it from the requisites necessary for a federal government (Hist. Fed. Govt., 2nd ed., 2). Labour members in the less populous colonies go so far as to say that they do not want a senate at all, as the interests of the masses in all the colonies are solid. Nor is there any danger of "absorption," when the subjects given to the federation by the states are limited by the constitution, and there is a federal court to restrain any overstepping of those limits. I notice that Mr. Trenwith does not deny the evil results of the system in the United States, but he objects to that case as not analogous, inasmuch as the Australian Senate is to be elected by the people of each state, not by the Parliaments, and (he says) the Australian Senate is "capable of dissolution at the will of the Executive Government." Now, passing by the inaccuracy of the latter statement (for the senate can be dissolved only in the extreme case of the

" deadlock provisions " becoming applicable), the facts alluded to would only make the senate stronger ; and the stronger the senate the more weight would be given to the provincial forces as against the national forces ; and the disastrous results would, therefore, be more accentuated in Australia than in America. Then Mr. Trenwith falls back on the Swiss Constitution, which, copying the American plan in 1848, gave equal representation to the cantons (with a few exceptions) in a states' house. He does not remember that equal representation is a very different thing when you start with 22 or more cantons, when a small canton has only one-twenty-second part of the control of the Senate, and when you start with five colonies, when a small colony has one-fifth of the control. But now comes Mr. Trenwith's crowning argument—extraordinary as coming from a man of democratic sentiments—that although equal representation gives eight times as much voting power in one house to a miner at Coolgardie as to a miner at Broken Hill, it does not make much matter, for it will give eight times as much power to the democratic voter as well as to the Tory voter in Coolgardie ! On this principle, the men of Manchester, in 1832, might have been effectively answered when they complained that they were not represented in the House of Commons, and Old Sarum, with a dozen or two voters, returned two members—" Oh, it does not matter, you know ; for your friends in Old Sarum have as much over-representation as your enemies." Richmond has two members ; Croajingolong is a mere fraction of Mr. Foster's wide constituency. I suppose Richmond has more thousands than Croajingolong has hundreds. On Mr. Trenwith's principle, I do not see why Richmond should not pass on its right to two members to Croajingolong, for the democratic voter of Croajingolong will have the same over-representation as the Tory voter. It is not a question of democratic voting and Tory voting at all. It is a matter of getting the Australian people, whatever their views, fairly represented in any Australian house.

I confess that I cannot understand Mr. Trenwith's persistence in saying that the bill provides for one man one vote. For the qualification is to be in each state " that which is prescribed by the law of the state as the qualification of electors of the more numerous House of the Parliament of the state " (s. 30). In Tasmania and in West Australia every man has not a vote—far from it ; and we know well how, in Victoria, many men are disqualified from voting by reason of ill-conceived electoral machinery. The Federal Parliament can make any provisions as to the federal franchise, and Mr. Trenwith assumes that that franchise, and its conditions, will be uniform over all the states. That is not necessarily so. The Parliament has, to say the least, power to leave Tasmania to its income and property

qualification. Mr. Trenwith, looking at the general feeling in New South Wales, in Victoria, and in South Australia in favour of adult suffrage, says that "we are as certain as we can beforehand be certain of anything" to have the members of both Houses of the Federal Parliament pledged to adult suffrage. I do not see the reason for this certainty, when one reflects that the majority of Tasmanian and West Australian senators will be added to a minority against adult suffrage from the other colonies.

As for responsible government, Mr. Trenwith has missed the point. I said the bill does not even give us responsible government resting on the House of Representatives; and Mr. Trenwith merely gives reasons for thinking that we shall have responsible government of some sort. He does not deal with the point triumphantly made by Sir Richard Baker, after the bill was completed, that the Senate will be "the pivot on which the whole federal constitution revolves" (although it is not the house of the taxpayers). Nor does he give any ground for disputing my statement that the power of the Senate to "suggest" amendments to any money bill, "at any stage, as often as it likes, is just the same as the power to propose amendments, which the Senate of the United States has." He merely says that the South Australian Legislative Council has had the power to "suggest" amendments for many years back. He is not aware that the South Australian Council can only "suggest" once, and even then cannot suggest any amendment of an ordinary appropriation bill. (See the paper laid by Sir Richard Baker on the table of the Convention, p. 3). The words of the Council's resolution, passed after a long struggle, are—"That it shall be competent to the Council to *suggest any alterations in any such bill (except that portion of the Appropriation Bill that provides for the ordinary annual expenses of the Government)*, and in case of such suggestions not being agreed to by the House of Assembly, such bills may be *returned* by the House of Assembly to this Council for reconsideration, *in which case the bill shall either be assented to or rejected by this Council*, as originally passed by the House of Assembly." In effect, the senate is to have the right to do just what the South Australian Council does not do—to make suggestions at any stage, and even as to items in an ordinary appropriation bill.

As for the provision for solving differences between the two Houses, Mr. Trenwith imagines that I complain of the double dissolution. That is wrong. It was I who first proposed it. I was beaten in Adelaide by 24 to 7. We won in Sydney. I readily concur with Mr. Trenwith in recognising the healthy influence of the power to dissolve on all elective Houses. But I say that the double dissolution, followed by a joint sitting at

which three-fifths must vote for the bill in dispute or the bill is lost, is a cumbrous provision, does not secure finality, allows the minority to carry its way, and can rarely be applied to money bills, as they cannot wait. In this connection I may add that I hope Mr. Trenwith has not fallen into the error which many have fallen into—in thinking that sec. 57, the provision for solving "deadlocks," applies to differences between the two Houses regarding amendments of the constitution. There are no means provided of solving such differences.

As for the referendum, it must be obvious from the context that I was referring to a national or mass referendum when said that there is no reasonable possibility of the constitution ever being amended so as to secure such a referendum. For, as the majority of the states as well as of the people must approve of any change, the minor states would object to the people being made the umpire in a dispute between the peoples' House and the states' House. It would be, as the Victorian Ministers urged in Sydney, giving equal representation with one hand and taking it away with the other.

With regard to the Inter-State Commission, I said that the provisions have not been sufficiently considered, and that they will lead to much quarrelling. Mr. Trenwith merely refers to section 99, and says that it is reasonable to suppose Parliament will prescribe proper powers. But he does not refer to sections 51 (1), 73, 97-99, 101-103 ; and he labours under the false notion that the Parliament can control the Commission, as our Victorian Parliament can control the Railway Commissioner. The truth is, Parliament and the Commission are to be co-ordinate, independent powers, and will be parties to the quarrels which any lawyer of experience will (as I think) safely prophesy.

As for the clause forbidding any change in the representation of the states in the senate without the consent of the state which is over-represented, Mr. Trenwith, with his usual candour, admits the difficulty. But he says that in the case I put—19 states, each having millions of people, and the twentieth being an almost deserted mullock-heap—the 19 states could "ignore the interests of this one state, and compel it, if only in self-defence, to fall in with the wishes of its more numerous neighbours." What a brilliant prospect ! This is surely the very kind of strain on the constitution which ought to be avoided. It means a state of compulsion, of fighting, of fratricidal war. There need not be bloodshed—

> "We fight now—by forbidding men to sell steel
> Or buy wine—not by blowing out their brains."

The Imperial authorities would probably step in to stop any extremes of physical violence ; but they would have to enforce the

constitution, however evil might be its operation. "But," says Mr. Trenwith, "we would still have power to appeal to the Imperial Constitution for an alteration of the constitution." Yes; and so would the people of the mullock-heap. They could say, "Look at the preamble. We all agreed to enter into an 'indissoluble Commonwealth under the constitution' established by this act. We gave up certain rights in consideration of the promise that equal representation is not to be altered without our consent; and the other states ought not to take the benefit of the agreement so far as it suits them, and to repudiate it where it does not." It is quite true that the Imperial Parliament can, legally, repeal or alter any of our laws, whether Australian or Victorian; but it would be unconstitutional to do so, especially when the law is based on a solemn agreement, and provides specifically for powers of amendment, and the limits thereof, and one of the parties to the agreement objects to the change. If Mr. Trenwith is content with an Australian constitution which ties Australia for ever to the apron-strings of the Imperial Parliament, I am not; and I have not found any who would be content.

I think it is due to *The Argus* to thank it for allowing me to express my views as a member of the late Federal Convention, and many will appreciate the public spirit shown in inviting this discussion. I have been enabled to put my views before a much wider circle than I could hope to reach by any addresses. It is well to have Mr. Trenwith's views so fully stated. One can see that he is deeply impressed with what he regards as the "immense strides in a democratic direction that this bill makes." That this bill should discard the antiquated system of property Houses—a system for many years discarded throughout all the United States—seems to him, as a man used to face the opposition of such Houses, to involve the removal of all obstruction to the free operation of public opinion. He does not see that public opinion may be as effectively thwarted by other devices, such as states' houses—especially if the system of states' houses cannot be changed. He is under the impression that he can treat this bill like a Victorian bill—take what he can get, and push for more. This, I think, is at the root of his mistake. This act cannot be improved by the Federal Parliament as a Victorian act can be improved by the Victorian Parliament. He thinks that he is taking an instalment; he is really, by accepting this bill taking a final payment—a fixed, rigid, and irrevocable commutation of the privileges of the Australian people. I could trust all to the future if this bill did not so tie the hands of ourselves and of future Australians as to amendments—if the justice and good sense of the Australian people were not so distrusted as they are in the provisions of this bill. Now that I have heard the best

that can be said for this bill, I am more convinced than ever that to reject this bill is the true wisdom, and that a far better bill, a far more flexible, far less provincial constitution, will soon reward the efforts of those who at present take on themselves the unpleasant task of saying No on the 3rd of June.—Yours, &c.,

H. B. HIGGINS.

May 9.

THE CONVENTION BILL

(*DAILY TELEGRAPH* ARTICLES).

At the request of the editor of the "Daily Telegraph" newspaper, of Sydney, New South Wales, the following three articles appeared in the issues of Saturday, May 21st; Saturday, May 28th; Wednesday, June 1st, 1898.

The Convention Bill.

(*Daily Telegraph*, Sydney, May, 1898.)

I am glad to avail myself of the opportunity offered to me by *The Daily Telegraph* of putting my views of the Convention Bill before its readers. For it is recognised on all sides that there can be no federation without New South Wales, as there can be no play of "Hamlet" with the character of Hamlet left out. New South Wales holds the key, and need not fear that it may be left out in the cold. Under the West Australian Act it is actually one of the provisions that West Australia is not to enter the Commonwealth unless New South Wales be one of the assenting colonies. Leaders of public opinion in South Australia do not want federation unless they can make certain of access to the markets which the western territory of New South Wales affords. South Australia will not enter a federation in which Victoria would have too great a predominance; and I notice that the day of polling there is to be the day after the polling in the eastern colonies. Even in Tasmania there has been a movement to postpone the day of polling; and we may be sure that the parliaments of the assenting colonies will refuse to send home a bill which New South Wales has rejected.

Now, I cannot hope to add much weight to the arguments of the public-spirited men in New South Wales who oppose this bill; but a sidelight may not be altogether useless, when it comes from a Victorian member of the late convention, who, with deep regret, has felt it to be his duty to oppose the measure in the interests of Australia as a whole. It is my hope that New South Wales, the great parent colony, will face the responsibility of its high position, and deliver the people of Australia from an act which, under the guise of federation, will stereotype and perpetuate a narrow provincialism.

One of the chief causes of danger is the warmth of federal sentiment, which one so gladly observes in the colonies, and not least in New South Wales. Anyone who reflects on the geographical position of Australia, its relation to the outside world, the unity of the people in race, in language, in habits, in social condition, in ideals, must feel that that unity should find political expression in a common organisation. Our sentiments and our material interests demand the sweeping away of Customs barriers between these colonies, and the cessation of the provincial jealousies and rivalries on matters of Australian concern. Therefore, when a bill is produced which is called a

federal bill, and which certainly creates a new organ of government, and which is to have the votes—I can hardly say the recommendations—of the principal statesmen of Australia, we are very apt to close our eyes to defects in details and to vote for it. Yet it is surely our duty—our duty to those who come after us as well as to ourselves—to ask whether it will really achieve our purpose, whether it will make provincial interests subordinate to Australian interests on Australian subjects, whether it can be changed with reasonable facility where it turns out to be defective or injurious, and whether it will allow the people of Australia to work out Australian problems as the changing conditions of Australia may from time to time require. I believe that this bill fails in all these respects.

A constitution should not be looked on so much as legislation as the creation of a machine for legislation and government. The main problems of any federal scheme are, therefore, three — to settle what subjects shall be committed to the federal authority; to settle the machinery for dealing with those subjects; and to provide that the people concerned may alter and repair the machinery where it is faulty. To prevent "unification," it is probably necessary to preserve considerable rigidity as to the subjects committed to the federation; necessary to let each smaller colony feel that it can put a powerful obstruction in the way of its more populous neighbours, should they attempt to force into the federal scheme matters which it has not agreed to treat as federal. But I contend that we have no right to dictate to the future Australian people what shall be the machinery for dealing with those subjects which are admittedly Australian, or to interfere with the control of all Australian questions by the majority of the people of Australia. To judge from some advocates of the bill, one would think that in the convention of 1897-8 the duty of members was to guide and restrain the people for centuries to come as to their own concerns—as the Biglow papers say—

> "That wut we hed met fur wuz jes' to agree
> Wut the people's opinions in futur' should be."

It is not enough to show people some of the atrocious faults in this bill—to show how provincial it is in the subjects allotted, and in the machinery for dealing with those subjects. They are willing to waive many objections in the innocent belief that, with the spread of intelligence and the growth of the federal spirit, these faults can be set right. I confess that I am much inclined to the same attitude, if I could find that under this bill free play is allowed to the working of public opinion throughout Australia, and that the Australian people are trusted with power to rectify mistakes as and when they appear; but I do not find this condition fulfilled.

Our Victorian Parliament can change any part whatever of the

Victorian Constitution Act. Sometimes an ordinary majority of each house is required, sometimes an absolute majority; but any part can be so changed. I presume that the New South Wales Parliament has a similar power. Under the last section of this bill, however, the Federal Parliament cannot make any change, however obvious or necessary, in any clause or word of the constitution. Under this section—

1. The preamble and the first eight clauses cannot be changed at all.

2. The equal representation of all original states in the senate, and the representation of any new state (whatever may be the number of senators agreed on), cannot be changed without the consent of the state which turns out to be flagrantly over-represented, and even though the people of all the other states require the change.

3. As for the bulk of the other provisions of the constitution, a small minority of Australians can prevent the large majority from making any change; and the selfish provincial spirit is given special powers of obstruction in the senate, and in the rule which requires the assent of a majority of states on the referendum.

I should not mention the preamble (1) but for the curious mistake which has been made by the Sydney *Bulletin*—a mistake which has been circulated in tens of thousands of leaflet reprints through all the colonies. This newspaper advises people to vote for the bill, and to do the necessary repairs afterwards. It evidently recognises the narrowness of the powers of amendment, but it urges that if the worst come to the worst, there can be an amendment striking out the word "indissoluble" in the preamble ("agreed to unite in one indissoluble Federal Commonwealth . . . . under the constitution hereby established"); and then there can be another amendment striking out all or any portion of the act. This extraordinary piece of legerdemain is absolutely out of the question. Sec. 127, which contains the only power of amendment to be conferred by the Imperial Parliament, applies only to "alteration of the constitution," and "the constitution" begins with section 9: "The constitution of the Commonwealth shall be as follows:—The constitution: This constitution is divided as follows." There is no power given to any authority within the bounds of Australia to alter any part of the act, except that part labelled "the constitution."

(4) As for the equal representation of all the original states in the senate, the remarkably able debates in the New South Wales assembly on the subject leaves little to be added to show how unnecessary and how dangerous is this violation of the principle of majority rule. This principle is based on fundamental physical facts—the majority are stronger than the

minority, and it is better to count heads than to break them. The object is to secure peace and order, to make private and special interests subordinate to the general interest, and to make the laws of a political community a true reflex of current opinions and current necessities. No legislative house has any right to exist in a democracy which does not fairly represent public opinion; and the senate cannot fulfil this condition when, on Australian subjects, an Australian in Coolgardie is to have eight or nine times the voting power as his brother Australian has in Broken Hill. There used to be a theory that a states' house, with equal representation, is necessary for any federation, and the Swiss republic, the Canadian, and the German federation, bear traces, fainter and fainter, it is true, as the century has rolled on, of this baneful theory. This bill proceeds to revert to the original American system, which was adopted under stress of the danger of loss of national independence, as a necessary compromise between the existing loose confederacy and a true federation. You might as reasonably insist, in New South Wales, on having a second house which should, for New South Wales purposes, give equal representation to the several districts, however thinly peopled—a house in which a few square miles near the Darling, with a squatter and a rouseabout, should have the same number of members as Sydney. We are so used in these colonies to the obstruction of property houses that we forget there can be any other machinery of obstruction. I could wish that some of the advocates of this bill would ponder over the weighty words of John Locke, uttered in 1691. Speaking of a political community, he says (Civil Government, 241): "It being one body must move one way, it is necessary that the body should move that way whither the greater force carries it, which is the consent of the majority." The whole false theory is the same in essence as that of the Tories in 1832, who contended that the House of Commons was not meant to represent the people, but communities or interests invited by the King to consult with him; and they justified a condition of things in which "a park where no houses were to be seen, three niches in a stone wall," and "a ruined mound" had two members each, while Manchester, with its teeming population, had not even one member. The United States have recognised the evils of the system, but they have to put up with it; for by their constitution (as by this bill) the system cannot be changed without the consent of the state which is over-represented. It was the cause of the unjust war with Mexico; of the growth of the slave power, of the great civil war (see Channing's History, 444). It was the cause even last year of the rejection by the United States of the noble arbitration treaty submitted by England, and approved by the great masses of the people of all parties. The

New England Magazine for June, 1897, says :—" Ten of the 26 senators (who voted against the treaty) from the five states of Idaho, Montana, Nevada, and North and South Dakota, represent a combined population smaller than that of either of the cities of New York, Chicago, Philadelphia, or Brooklyn. Nevada, with the same power in the senate as the largest state in the union, has a population (60,000) less than that of Worcester, or Lowell, or Fall River, or Cambridge, in Massachussetts. These were the states which blocked civilisation, and covered the republic with shame before the world. . . . . Only the constitution of the senate, which makes it a grossly and grotesquely unrepresentative body, makes possible even such a minority vote as that which defeated the arbitration treaty, and the overwhelming majority of the American people, and almost all of the country's intellect and conscience are on the side of peace and reason, and the proposed advance."

The evils of this system will be aggravated in Australia, where the states are so few, and the " cussedness " of a " crank " state cannot be counteracted so easily as in America, with its 45 states. Of course, this system tends strongly to foster narrow provincialism in the treatment of Australian subjects, and to lessen the benefits which we hope for from federation, and from the handling of matters of common Australian concern in the interests of Australia as a whole. It is like the sin of Ananias ; for the states, while affecting to give up certain powers for the general benefit, keep back half their gift, keep a control of the powers by means of a states' house. Yet this is the part of the constitution which, of all others, we select to put beyond the control of the majority of the people, and the majority of the states ! We have warnings enough from American publicists, if we would only listen to them. Burgess, in his recent work (Political Science) styles as " confused and unnatural," the rule under which equal representation is secured against the state, the sovereignty as organised within the constitution. . . . " No constitution is complete which undertakes to accept anything from the power of the state as organised in the constitution. Such a constitution invites the reappearance of a sovereignty back of the constitution ; *i.e.*, it invites revolution." (See also p.p. 151-153, Vol. 1).

(3) Changes in the ordinary machinery of the constitution can be blocked by a small minority of the people of Australia. Suppose that some flaw be found in the section which attempts to conserve the rights of all public servants in the departments transferred to the Commonwealth ; or suppose that as, to say the least, is quite possible—the financial clauses are found to be working ruin to one of the federating states, rendering it unable to meet its heavy bill for interest ; or suppose—as is probable—

minority, and it is better to count heads than to break them. The object is to secure peace and order, to make private and special interests subordinate to the general interest, and to make the laws of a political community a true reflex of current opinions and current necessities. No legislative house has any right to exist in a democracy which does not fairly represent public opinion; and the senate cannot fulfil this condition when, on Australian subjects, an Australian in Coolgardie is to have eight or nine times the voting power as his brother Australian has in Broken Hill. There used to be a theory that a states' house, with equal representation, is necessary for any federation, and the Swiss republic, the Canadian, and the German federation, bear traces, fainter and fainter, it is true, as the century has rolled on, of this baneful theory. This bill proceeds to revert to the original American system, which was adopted under stress of the danger of loss of national independence, as a necessary compromise between the existing loose confederacy and a true federation. You might as reasonably insist, in New South Wales, on having a second house which should, for New South Wales purposes, give equal representation to the several districts, however thinly peopled—a house in which a few square miles near the Darling, with a squatter and a rouseabout, should have the same number of members as Sydney. We are so used in these colonies to the obstruction of property houses that we forget there can be any other machinery of obstruction. I could wish that some of the advocates of this bill would ponder over the weighty words of John Locke, uttered in 1691. Speaking of a political community, he says (Civil Government, 241): "It being one body must move one way, it is necessary that the body should move that way whither the greater force carries it, which is the consent of the majority." The whole false theory is the same in essence as that of the Tories in 1832, who contended that the House of Commons was not meant to represent the people, but communities or interests invited by the King to consult with him; and they justified a condition of things in which "a park where no houses were to be seen, three niches in a stone wall," and "a ruined mound" had two members each, while Manchester, with its teeming population, had not even one member. The United States have recognised the evils of the system, but they have to put up with it; for by their constitution (as by this bill) the system cannot be changed without the consent of the state which is over-represented. It was the cause of the unjust war with Mexico; of the growth of the slave power, of the great civil war (see Channing's History, 444). It was the cause even last year of the rejection by the United States of the noble arbitration treaty submitted by England, and approved by the great masses of the people of all parties. The

New England Magazine for June, 1897, says :—" Ten of the 26 senators (who voted against the treaty) from the five states of Idaho, Montana, Nevada, and North and South Dakota, represent a combined population smaller than that of either of the cities of New York, Chicago, Philadelphia, or Brooklyn. Nevada, with the same power in the senate as the largest state in the union, has a population (60,000) less than that of Worcester, or Lowell, or Fall River, or Cambridge, in Massachussetts. These were the states which blocked civilisation, and covered the republic with shame before the world. . . . . Only the constitution of the senate, which makes it a grossly and grotesquely unrepresentative body, makes possible even such a minority vote as that which defeated the arbitration treaty, and the overwhelming majority of the American people, and almost all of the country's intellect and conscience are on the side of peace and reason, and the proposed advance."

The evils of this system will be aggravated in Australia, where the states are so few, and the " cussedness " of a " crank " state cannot be counteracted so easily as in America, with its 45 states. Of course, this system tends strongly to foster narrow provincialism in the treatment of Australian subjects, and to lessen the benefits which we hope for from federation, and from the handling of matters of common Australian concern in the interests of Australia as a whole. It is like the sin of Ananias ; for the states, while affecting to give up certain powers for the general benefit, keep back half their gift, keep a control of the powers by means of a states' house. Yet this is the part of the constitution which, of all others, we select to put beyond the control of the majority of the people, and the majority of the states ! We have warnings enough from American publicists, if we would only listen to them. Burgess, in his recent work (Political Science) styles as " confused and unnatural," the rule under which equal representation is secured against the state, the sovereignty as organised within the constitution. . . . " No constitution is complete which undertakes to accept anything from the power of the state as organised in the constitution. Such a constitution invites the reappearance of a sovereignty back of the constitution ; *i.e.*, it invites revolution." (See also p.p. 151-153, Vol. 1).

(3) Changes in the ordinary machinery of the constitution can be blocked by a small minority of the people of Australia. Suppose that some flaw be found in the section which attempts to conserve the rights of all public servants in the departments transferred to the Commonwealth ; or suppose that as, to say the least, is quite possible—the financial clauses are found to be working ruin to one of the federating states, rendering it unable to meet its heavy bill for interest ; or suppose—as is probable—

or in keeping these great areas from making that subdivision which must become expedient as population grows and as territory is developed. Such a difficulty did not arise in the United States, where new states were created by aggregation, by the organising of outside territories, not by sub-dividing existing states. It will be observed also that whatever number of senators a new state bargains for, she must retain, and whether she increases in population beyond all other colonies, or dwindle till she become an abandoned mining territory, a change is practically impossible. For, if she greatly increase in population, the proportionate representation of the less populous states in the senate cannot be diminished without their consent; and that proportionate representation would be diminished by increasing the number of senators for the state in question. On the other hand, if she dwindle in population, her proportionate representation cannot be diminished without her consent (sec. 127, last clause). In short, no one can say to what an *impasse* this rigidity as to representation will lead Australia. We in 1898 have no right to dictate to the future people of Australia as this section dictates, or so to tie their hands by this parchment bond. We have no right to deposit the ultimate sovereignity of Australia in a document which cannot be swayed by reason or moved by prayers, or impelled, except by the violence or revolution of the people affected by it, and which in the meantime is to be backed up by the courts, and the police, and the soldiery, and (if necessary) by the Imperial power.

II.

In my first paper I dealt with the rigidity of the proposed constitution, not only with regard to the subjects entrusted to the federal authority—as to which there is some justification for rigidity—but with regard to the machinery for dealing with such subjects; and I endeavoured to show how the advocates of this bill, while they think that they are working towards a broad, national, Australian ideal, are in truth working to perpetuate provincialism. I contend that to create a "states' house," and to firmly and unalterably entrench it in the constitution (s 127), means to place an immovable obstruction in the way of a generous treatment of Australian subjects in the interests of the Australian people as a whole. I say that we cannot treat the constitution as a "step in the right direction." It is a final step. We are to be committed to an "indissoluble commonwealth under the constitution hereby established;" we are to take this bill as a permanent and irrevocable commutation of our claims to a national life. This is my reason for urging delay; and the only means of getting delay is to reject this bill on the 3rd June.

Now I desire to refer to certain grave faults of the bill in detail. But I shall not discuss it from the provincialist point of view, as to the relative commercial gains of New South Wales, of Victoria, and of the other colonies. Sir George Turner speaks of the bill as "the very best bargain we could get on behalf of Victoria." I conceive this huckstering attitude to be absolutely wrong. But so many contradictory statements are made by the advocates of the bill, from this point of view, that I am constrained to refer to some of them, and to indicate the uncertainty of the bill with regard thereto. For instance. we in Victoria are instructed by the *Argus* and other advocates of the bill that the federal authority can check the long haulage rates of New South Wales, by means of which trade is attracted from Riverina to Sydney which would otherwise naturally come to its nearer port—Melbourne. But Mr. Barton, speaking to Sydney audiences, assures them that these rates cannot be altered; that the federation has not power to interfere with the intercolonial traffic of a state which begins in its bounds and ends in its bounds; and he goes so far in his indignation as to say that anyone who, being a lawyer, says the contrary, is saying "what he knows is not a fact." Take again the railway indulgences granted to our Gippsland coal. This coal is carried by the Victorian railways at half the rate that is charged for Newcastle coal. Mr. Deakin assures our Gippsland miners that these indulgences cannot be interfered with. "The 103rd section of the bill undoubtedly confers power upon the local Parliament to foster the coal industry of South Gippsland by means of exceptional railway rates, and this assuredly would not be interfered with by any action of the inter-state commission. . . . . There is no restriction upon these bounties, either from the states or the Commonwealth." This sounds pleasant to our coal miners, until they hear what Mr. Wise has to say to the men of Newcastle. I quote from a Newcastle paper:—"After this constitution is adopted, you will be in a much better position to compete with the Gippsland miners, as all subsidies and preferential railway rates must be abolished. In short, you will be able to undersell the Victorian coal-miner in his own market." Of course I do not doubt in the least the honesty of these speakers, each speaking in his ardour for the adoption of the bill. But both statements cannot be true; and it really would be only fair to the electors of both colonies that the advocates of the bill should agree as to its meaning before they make such utterances. Take, again, sec. 99 as to the rivers. Who knows whether New South Wales can be stopped by the inter-state commission, or by any other federal authority, if it proceed to appropriate all the waters of the Darling for conservation or irrigation? We are told here most positively that sec. 99 "throws upon the Federal

Parliament the duty of deciding what is the reasonable use for irrigation and conservation purposes of the waters of such rivers. . . . . Immediately upon the establishment of the Federal Parliament this control of New South Wales will absolutely cease, and be handed over to the people of the Commonwealth." What do the New South Wales advocates of the bill say to this doctrine? Then look at the provisions for the inter-state commission. No one can say where its functions begin and where they end; but any lawyer will prophesy with certainty an endless field for litigation in questions as to the relative power of Parliament, of the High Court, and of the commission, and in questions as to the scope of the duties of the commission. Some people fancy that the inter-state commission can be limited in its powers and controlled by the wisdom of the Federal Parliament, just as the Railway Commissioners can be controlled and limited by the State Parliament. That is a mistake. The Federal Parliament can prescribe the power of "adjudication and administration . . . . for the execution and maintenance of the provisions" of the constitution, "relating to trade and commerce." But when once appointed—and the appointment is made obligatory—the commission is a power co-ordinate with Parliament, independent, in most respects, of Parliament, and irresponsible. Are the Railway Commissioners of the colonies to constitute the commission? If so, there will be a nice tug of war; if not, who are to be the commissioners, and what work have they to do? The provisions have not yet been sufficiently considered. Take, again, the financial question, which has been more fully discussed in New South Wales than in Victoria. Financial experts say that either New South Wales people must endure a huge addition to their customs and excise taxation, or some of the other colonies will be unable to meet the interest on their public debts—will become insolvent. Without attempting to dogmatise in this dispute, I do assert that the matter is sufficiently grave to make sensible men pause. And I may add that we are creating an unprecedented position for our colonies, with their Titanic loads of debt. Each colony—each "sovereign state," as it is called—is to be dependent on an outside organisation for its solvency—for raising enough money by taxation to pay, not only the (unlimited) expenditure of that outside organisation, but to distribute among the several colonies enough revenue for their several needs. No doubt each colony will exert pressure to have sufficient taxation raised; but that is where one of the evils comes in. The state treasurer, the state executive, will be forced to actively interfere with the elections for the federal parliament. Elections in each state for that parliament will largely turn on state party disputes and on state requirements;

men will be elected on state party issues; and there will be an unhealty mixture of state issues and federal issues, and a steady process of degeneration in state and in federal politics. When the first seven years of the commonwealth have passed away—the seven years of book-keeping and border inspection and returns—the federal parliament will have to decide how the surplus revenue is to be distributed between the several states. That will be a nice apple of discord to throw among the states. Sir George Turner predicts a "general scramble," "log-rolling," and "a possible combination among the smaller states to get better terms out of the larger ones." I think that his prediction is likely to be unpleasantly fulfilled; and for this opinion we have the confirmation of the experience of Canada.

I shall now pass to the argument that this bill provides for responsible Government, resting on the house of representatives, the national house; for it is urged that, having the control of ministries, the national forces will be able to overcome the provincial forces—that the rule of the majority of Australians in Australian matters will, through responsible government, be secured. In my opinion, it is more than likely that the senate, the house which the minority of taxpayers control, will before long feel its power, control the finances, and make and unmake ministries. There is no clause in this bill, as in the preamble to the Canadian Act, indicating an intention to have a constitution on the English model. But the executive ministers must have seats in parliament—in either house (s 64). It is urged on behalf of the bill that supremacy in financial matters is secured for the national house (1) by the provision that that house shall originate all taxation bills, and all bills appropriating moneys "for the ordinary annual services of the Government" (whatever that may include); and (2) by the provision that the senate may not amend any such bills. Now, the sole power to originate money bills, which the house of representatives possesses—partly by the constitution, partly by usage—in the United States, has become, incredible as it may seem, a cause of inferiority and of diminished influence (of that house) in financial matters; and "the balance of political power inclines decidedly to the senate." (Boutmy 81, 116.) Senator Hoar speaks of the power as a "barren and empty privilege," and says that "when the large states accepted the clause in question as a partial equivalent for the equality of the small states in the senate, they accepted a further limitation of their own power." Having regard to the longer tenure by which the senators are to hold their seats, to their retirement by rotation, to their prestige, arising from election by a whole colony, to the obligation put upon the House of Representatives to find some means whereby money may be found to meet the needs of the Federal and the

State Governments, and to the peculiar urgency of money bills which renders the deadlock provisions rarely applicable to a dispute between the houses, I have little doubt that the senate will, at the end of a session, nearly always get its way in money matters, will before long control the finances, and thereby control the ministries. At the first, no doubt, the Premier and the chief ministers will be selected from the national house; but the centre of gravity will ere long be found in the senate, and ministers will gravitate there. I believe, therefore, that there is considerable truth in Sir Richard Baker's triumphant prediction, uttered on the last day of the convention, after the bill had been carried, "that the senate will be the pivot on which the whole federal constitution will revolve." With regard to the clause forbidding the senate to "amend" (that is, to propose amendments to) taxation bills or ordinary appropriation bills, the power to "request" amendments is just the same—under a different name. Probably the distinction will lead to elaborate disputes as to the form of the message between the two houses in many cases; but that is all. The senate can "request" amendments "at any stage"—not once, but as often as it likes. It can protract the dispute until the House of Representatives, which is responsible to the country for originating some means of getting supplies, is, at the end of the session, forced to yield; and if the chief ministers are at the time in the House of Representatives, they will be in the usual position of the party most eager for a bargain—they will get the worst of the bargain, and will yield to the senate's demands. Yet how absurd it is that a house in which, even at the start, one-fifth of the people, paying about one-fifth of the taxes, hold three-fifths of the power, should have equal, or, worse still, superior power as to the finances! As Mr. Reid well put it, such a position would be reasonable if each state contributed equally to the taxation, but certainly not otherwise.

III.

It is urged that the power to suggest or request amendments to money bills has for many years been found to work well in South Australia. This statement must be qualified. From a paper laid by Sir Richard Baker on the table of the convention, I find the words of the compact made by the Legislative Houses in South Australia: "That it shall be competent to the Council to suggest any alterations in any such bill (except that portion of the Appropriation Bill that provides for the ordinary annual expenses of the government), and in case of such suggestions not being agreed to by the House of Assembly, such bills may be returned by the House of Assembly to this Council for reconsideration; in which case the bill shall either be assented to or rejected by this Council as originally passed by the House of Assembly." In short the Council can only suggest once, and

then is face to face with acceptance or rejection of the whole bill; and the Council cannot make any suggestion as to ordinary annual appropriations. I understand also that at the present time a party is coming to the fore in South Australia pledged to vote for the taking away even of this limited privilege from the Council.

Some people who see the dangers to which I have referred fly, as a last resort, to the clause called the "deadlock clause." They fancy that by means of the double dissolution and the joint sitting the general public opinion of Australia will prevail over the provincial and restrictive tendencies of the senate. Now, it was I who first moved in the convention in favour of the double dissolution. We were beaten in Adelaide by 24 to 7, but we carried our point in Sydney. I moved that an ordinary majority should be sufficient to carry its way at a joint sitting of the houses; but the convention determined to insist on a three-fifths majority—determined that if (for instance) all the members of both houses voted, and 56 voted one way and 38 the other, the 38 should carry their way! I fully recognise the healthy influence of the power of dissolution on any elective house. But it is not enough to secure what we want. Suppose—as is quite on the cards—a quarrel between the houses on the difficult point of the distribution of surplus revenue among the states; and suppose that, which Sir George Turner apprehends, to happen—a combination of the smaller states in the senate, working to secure a greater share of the surplus. Should the houses be dissolved, the senators of a small state will go back to their electors, and point out that they are being punished by a dissolution for working in the interests of that state; and the chances are great that the double dissolution will result in the national and the provincial forces fronting one another very much as before. The Australian ideal is still to be checked by the narrow, provincialist forces; and the position is practically the same at the joint sitting. The majority of the people of Australia are not to be trusted. The national spirit is to be put under restraint, and the provincialists can call "check" at every move of those who work for the general good of Australia as a whole. I assume that there is no need for me to point out that even this cumbrous and defective machinery for getting rid of a difficulty between the two houses cannot be applied to a dispute between the two houses, as to the amendment of the constitution. When an amendment is proposed, the blocking power of the senate is absolute. The people of the several states cannot deal with the proposal until the senate has first consented to the proposal by an absolute majority. If any elector feels doubt as to my assertion that the "deadlock" provision does not apply to the case of a proposed amendment, I feel no doubt

that any of the legal members of the convention who advocate the bill would confirm my view on the subject.

With regard to a national referendum, there is at present a difference of opinion, even among those who call themselves liberals. Personally, I am strongly in favour of remitting to the people of any civilised community, where a serious dispute arises between two houses of parliament, the question which of the two agents the people, as the principals concerned, think to be right. Of course, such a referendum should not be taken except in grave cases, and after the members have repeatedly taken the responsibility of voting for or against the measure, and after full discussion in parliament and in the press. I conceive that there was a critical day in Sydney last September, on which it was possible, if the advantage had been properly pushed, to get the insertion of a clause providing for a national referendum for the final settlement of a protracted dispute between the houses. Mr. W. M'Millan, although of conservative leanings, was prepared to vote for it. Mr. Holder, although much bitten with the states' house theory, was prepared to vote for it. But our Victorian ministers stepped in, and dashed our hopes. They could have said that though they were willing to give equal representation to the smaller states, in order to assuage the fears of some people in those states, they were not willing to repose the final settlement of any Australian subject in any control except that of the majority of the Australian people. But they said that they would not give equal representation with one hand and take it away with the other; and all hope of a national settlement was lost. Now, in the making of the constitution, one can conceive of a provision for the referendum, as a kind of set-off to and corrective of equal representation. But when once this constitution is adopted, all hope of the referendum must be for ever abandoned. For there is, first, the block of the senate, and then there is the block of the vote of the smaller states to any amendment of the constitution providing for the referendum. The senate and the smaller states will urge, as was urged by the Victorian ministers in Sydney, "What is the good of a states' house to check the people's house if the people are to be the umpire? What is the good of a states' majority to check the people's majority if a majority of the people can decide any dispute?" I should not urge the refusal of this constitution because it does not provide for the referendum, but because it renders the adoption of the referendum practically impossible.

The great bait held out to catch the votes of liberals is the alleged provision for "one man one vote." It should be called "one elector one vote;" for every man is not an elector. I do not know how matters stand in New South

Wales, but in Victoria; owing to bad electoral machinery, tens of thousands of persons entitled to a vote are deprived of it. In Tasmania there is an income and property qualification. In West Australia there is a long residence qualification, which practically disfranchises a large proportion of the migratory mining population. There are only, I am told, 15,000 electors in a colony of 160,000 people. The federal parliament can make provision as to the suffrage. But the provision need not be uniform—it may leave Tasmania to its limited franchise. Laws which are to affect all Australians are to be made by men, some of whom are elected on a narrow franchise. But the grand error in this connection is that people think that in getting rid of property houses, houses resting on a property qualification for members or for electors, they are getting rid of the only possible obstruction to the free operation of Australian public opinion on Australian subjects. They forget that as effective an obstruction can be applied by means of a state house, a minority house, a provincial house; and, above all, if backed up by a rigid, restricted parchment constitution. We in Australia have been so much hampered by the antiquated system of property houses—a system which has been long since discarded by each of the 45 united states of America—that we fancy the abolition of property houses means the subordination for ever of narrow, special interests to the general interest. This fallacy is very common among people who have only watched Australian politics, and it has to be pointed out again and again by those who see it.

I feel that I have in these two papers exceeded the limits of your generous invitation. I should have liked to refer to the danger of the huge electorates necessary for the house of representatives—one member for about 53,000, even at the start; and to the danger of the fixed proportion of two to one as between the house of representatives and the senate. When Australia has 70,000,000 of people, it cannot have more than 64 members of the house, unless the number of senators be increased so as to preserve the same proportion! There are many other matters to be criticised in this complicated bill; but I feel that I have sufficiently trespassed on your indulgence and on your readers' patience. When all has been said and done by way of criticism, there are many who will vote for the bill in the smug optomistic belief that any mistakes in the bill can be set right, and many who will vote for the bill because so many able men of the convention have expressed their intention to vote for it. It is very difficult to get men who have been accustomed to the omnipotence of the British parliament, and to the omnipotence (within the limits of New South Wales) of the New South Wales parliament, to understand the helplessness of the

federal parliament, and of the federated people who will have to beat their heads against the iron walls of this federal constitution. It is still harder to get men to see the peculiar pressure of political exigencies on those statesmen who express their reluctant approval of the bill, and the peculiar temptation which every member of the convention feels to find some tangible result for his labours, and to have his name associated with the federal constitution for Australia. It is amusing to watch the perplexity of the two premiers of the largest colonies. They do not like the bill, but they do not want to be identified with what seems at first sight to be opposition to the strong current of federal sentiment. They remind one of the attitude of 'Zekiel, when courting Huldy:—

> He stood a spell on one foot fust,
> Then stood a spell on t'other;
> An' on which one he felt the wust,
> He couldn't ha' told ye nuther.

It is only fair, however, to Mr. Reid to admit that he has put his grave difficulties frankly and fully before the people of New South Wales. He does not advise the electors to vote for the bill. They are to "judge for themselves," but he is going to vote for it. He is explicit in disavowing any sympathy with the cry that it is a case of "federation now or never," for the people of Australia will not allow the fate of disunion to come upon them, whether the bill be accepted or not. The discussion on this bill has had a great educational influence on people and on politicians. The people have never been consulted until this time, and there is no need for discouragement if we fail in solving the problem at our first attempt. The result is well worth the money which has been spent; the value of a sound scheme of indissoluble union cannot be measured in money. Convention delegates must feel that many of their platform declarations will have to be modified in consequence of the debates, and will have to be still more modified as the result of the voting on the 3rd of June. Some of us see the solution of many of the difficulties of the problem in allowing New South Wales the due weight of her great prospective population in both houses of the federal parliament, so that she will feel free to commit to the keeping of the federal parliament several matters as to which she now repudiates federal interference. But be that as it may, a decisive rejection of this bill by the electors of New South Wales on the 3rd of June will do more than anything I know of to open the eyes of Tories and "states' rights" men, and to make possible a broad and healthy and flexible system of federation, and to create a constitution which shall grow with the growth and develop with the development of the Australian people.

May 24.

ADDRESS DELIVERED ON

The Premiers' Amendments

By Invitation of

The Working Men's Club, of Richmond.

The commonwealth bill of 1898 was accepted, on referendum to the electors, by large majorities in Victoria, South Australia and Tasmania ; but in New South Wales the affirmative votes did not reach the minimum number (80,000) required by the New South Wales Enabling Act. After much correspondence, the Premiers of New South Wales, Victoria, Queensland, South Australia, West Australia and Tasmania met in secret conference at Melbourne on the 28th, 30th and 31st January, and the 1st, 2nd and 3rd February, 1899, and framed certain amendments, agreeing that if these amendments were made the amended constitution could be recommended by the Premiers to the electors in their respective colonies.

This address was delivered at Richmond on the 19th February, 1899.

The Premier's Amendments of the Commonwealth Bill of 1898.

I APPRECIATE highly the honour which the Working Men's Club of Richmond has done me in inviting me to give an address on the new aspects of the federal question. I am aware, of course, that many of you may have disagreed with me in the attitude which I took up with reference to the late Convention bill last year; but, so far as I can find, it is well recognised that I did the best according to my light, and that I had nothing to gain, but much to lose, from what I did. I opposed the bill with much hesitation, with much regret, with much distrust in myself when I found that my fellow-delegates from Victoria to that Convention recommended the bill to the acceptance of the people of Victoria. But now that I have read the Premiers' proposed amendments, I have no reason to regret my opposition. We were easily beaten in the voting. I think we all knew we should be; but even though beaten, we find that our arguments, our principles, have had a very decided effect in the shaping of the bill. Every real modification proposed is in the direction advocated by the conquered—except as to the capital, and that was a foregone conclusion in any case. That is a remarkable result. I can assure you—and I was in communication throughout the struggle with the anti-bill men in New South Wales—that our steady adherence to liberal principles, to national Australian principles, strengthened the hands of our brothers in New South Wales. Here, in Victoria, we had not a single newspaper to back us up. But the "Daily Telegraph," in Sydney, invited me to write in its columns, and I gladly seized the opportunity, though in the very thick of our own campaign. You know that in New South Wales, as well as here, the opponents of the bill had to face the opprobrious taunts of those who said they were opposed to federation; whereas, in fact, they, and we, were aiming at a more perfect federation, a more perfect Australian brotherhood. Well, owing to their gallant, uphill fight, they were so nearly equal to the other side that it has been felt to be fruitless to force the bill through New South Wales without making concessions to their leading

principles. The bill as amended still contains some most dangerous clauses; but even if it should be passed into law, it will free our Australian Commonwealth of some of the worst features of provincialism which appeared in the Commonwealth Bill; and, above all, allow (what the Convention bill did not allow) the possibility, though after much unnecessary strain and struggle, of a better constitution in the future.

One fact stands out now as clearly as the sun at noon-day—a fact which those of us who opposed the bill insisted on, and begged our Ministers to recognise—the fact that there is to be no federation without New South Wales. No colony is indispensable to federation except New South Wales. Three colonies have accepted the bill with all its faults, and they are legally entitled to ask the Imperial Parliament to pass the bill into law. But they don't do it. Why? Because neither Tasmania nor South Australia will federate with Victoria unless New South Wales be in the federation, too. As a South Australian politician said to me, "We don't care twopence about federating with Victoria, you can supply yourselves with all that we can produce, but we want a share of the trade of New South Wales." As Sir Henry Wrixon said the other day in the Federal Council: "The bill having technically failed in the parent province, but having succeeded in the three other colonies, it was then open, under the law, for those three provinces, in which the process of legislation had been completed by an affirmative vote of the people, to have sent home the bill to the Imperial Parliament, and proceeded to act under it. But, of course, no one would have proposed such a thing; it was not for a moment thought of, and I merely allude to it for the purpose of showing that it is cleared out of the way." And yet our ministers, with extraordinary fatuity, while professing to be in accord in principle with the aspirations of New South Wales, insisted on making concessions to the other colonies at the expense of New South Wales—at the expense of justice to New South Wales, at the expense of the larger national life to which we aspire. For instance, our Premier led off in Adelaide by conceding equal representation of the states in the Senate as a matter of course, as essential to any federation; and from that moment a reasonable compromise on the subject became impossible. No authoritative voice from any colony had then insisted on equal representation of the states—which means unequal representation of the people—as being essential. I do not believe that if the Liberals of South Australia, of West Australia, of Queensland, of Tasmania (and there are some in Tasmania), had the subject fully debated before them, they would have equal representation—a states' house—at all. I have spoken with labour leaders in South Australia, and I find that they see that

the theory as to the need of a states' house to check the people's house is cant and pedantry. The great mining population of West Australia have not yet been consulted at all; and they make up, it seems, about 50 per cent. of the male adults in that colony. The people of Queensland have never yet been consulted on federation. And listen to what Mr. Glassey, the leader of the labour party, the leader of the Opposition, in Queensland, had to say at the recent Federal Council. He said: "It is true that Mr. Dickson made certain objections to some of the provisions of the Commonwealth Bill, more especially with respect to the powers of the Senate. The honourable gentleman attaches great weight and importance to what he regards as states' rights. I, on the other hand, hold very strong views in the opposite direction, notwithstanding the fact that I come from Queensland. As was stated by my fellow-representative, Mr. Barlow, Queensland, with its 600,000 people, will be regarded as a smaller state in the federation, but I contend that the majority of the people of a state, whether it is large or small, should rule, and I do not by any means agree with equal representation in the Senate any more than in the House of Representatives. I thoroughly endorse the principle that the majority of the people should rule in both houses of the Federal Parliament. Therefore, we who represent Queensland in this Council are not agreed in regard to state rights. I have no fear of the majority of the people outraging any state right or doing any damage to any state; I have no fear of their taking any course which would be detrimental to the best interests of any of the colonies, even if we have proportional representation in the Senate, and I certainly favour that principle." Mr. Glassey has a strong backing, and is too clear-headed not to see that this doctrine of a States' House, as necessary to protect the minor states against the masses of the people of Australia, is simply rank Toryism working in a disguise. They say that if you scratch a Russian you will find the original Tartar. If you scratch a States'-right man, you will find the reactionary Tory.

I would have you to note that our brothers in New South Wales have not made use of their commanding position in this federal question for the purpose of aggrandising New South Wales. They have used it for the benefit of Australia and the Australians; and we should never forget this to them. Even in the matter of the federal capital, they do not insist that it shall be in Sydney. This was never the cry of the masses; it was the demand of an influential section of men in property-owning and importing circles. We knew all along that the capital would be in New South Wales, and it was not grudged. Mr. Dobson, one of the Tasmanian members, said at the Federal Council last month: "It is a well known fact that nine-tenths of the members of the Convention, who were the

people's chosen representatives, would have consented to the federal capital being in New South Wales." This slight concession, which is now expressed in words, was always the general understanding. If the New South Wales members had insisted on its being inserted in the bill of 1898, it would have been put in without a division. But I would have you to note the significant fact that such special concessions as are proposed to be made to the desires of particular colonies are to be made to just those colonies which have not been too greedy to clutch federation at any price. New South Wales was not too eager, and she is to have the capital ; West Australia was not too eager, and she is to be allowed to charge intercolonial duties for five years longer ; Queensland has not been too eager, and she is to be allowed to elect her senators by three districts. Tasmania, Victoria, and South Australia get no distinctive concession. And yet Victoria has good ground for asking that her hands should not be tied, as they are tied by this bill, in the railway competition for the Riverina trade ; and she has good ground for asking, as Mr. M'Lean showed, that her border duties should not be removed at once, but by successive steps during five years. The party that is too eager for a bargain always gets the worst of it. But let me pass from these matters to another, which dwarfs them by comparison. I refer to the new proposal with regard to the amendment of the constitution. I have always maintained that grave mistakes must be found in any constitution, and that novel conditions must arise which will render our best-laid schemes unworkable ; but that if there be a reasonable power to amend the constitution, if the people of Australia as a whole are free to bring their commonsense, and their sense of justice, into play from time to time, so as to mould their constitutional arrangements as the circumstances demand, we might at once safely entrust ourselves in almost any scheme of federation. But no people are truly free who are not free to mould their own constitution. It seems impossible to convince some people, who have learnt how the British constitution has been moulded and varied in character from time to time, of the difference between a written constitution like this one, and an unwritten constitution like the British. We are told by mouthing orators, that the genius of the Anglo-Saxon race could never submit to a constitution which is ill-adapted to its wants ; and people still say this, even though they have the warning example of the United States before their eyes, where statesmen groan to find it impossible to vary the constitution in any material point without a civil war, and where the people have come to look on the constitution as if it were as unalterable and as fundamental as a law of nature. Only once since the beginning of the century, has there been any material alteration ; and that was the fruit of the four years civil war—the great 14th and 15th

amendments, establishing the civil rights of the negroes. The Anglo-Saxon character of the race has never enabled the people of the United States to get rid of the system of equal representation; it has never enabled them to get rid of the system of election of senators by the State legislatures. Mr. Edward Dicey, in the last September number of the *Nineteenth Century* points out how the constitution of the United States, "bound as it is by the written word, does not possess the same facility of adapting itself to new and unforseen conditions" as the British Constitution "has displayed time after time in our own history." And he says, "Owing to the inelasticity of the constitution, the Gordian knot could only be cut by the sword" (referring to the great civil war). Now, under the late bill, the bill of 1898, for any alteration of the constitution you had to get four consents, four majorities—two national and two provincial. You had to get an absolute majority of the House of Representatives (the National House), an absolute majority of the Senate (the Provincial House), a majority of the people of Australia voting on a referendum (a National majority) and a majority of the States (a Provincial majority). You had to get all these four to concur, or there could be no amendment. Should the Senate stand out against the alteration, should it fail to give an absolute majority of members for the alteration, you could go no further—you could not appeal to the people. You could not get over the Senate's obstruction by any joint sitting, by any dissolution, by any referendum. Now, what is proposed? It is proposed that if one of the two houses fail to give an absolute majority, you may appeal over the head of that house, to the votes of the people and of the states. You can get over, you can dispense with, one of the four consents—the consent of one of the houses. This is a great step in advance. For, in the first place, it enables you to get over one of the two obstructions, created from a provincial point of view, to any alteration which most Australians consider to be necessary; and in the second place it creates a precedent for appealing to the public when two houses differ—a precedent of which we shall not be slow to avail ourselves in our state constitutions in Victoria and elsewhere. You are now to be allowed to alter the constitution by the consent of one house, and of the majority of the voters on a referendum, and (I am sorry to have to add) of the majority of the states. I fancy that the far-reaching consequences of this proposal have hardly yet been grasped. It seems to me that it will be actually less difficult to get an alteration of the constistitution carried where the two houses differ than to get an ordinary law carried where the two houses differ. For, if the two houses differ as to an ordinary law, the law cannot be carried without a double dissolution, and, possibly, a joint

sitting; and a dissolution is just the thing that members, of a paid parliament particularly, wish to avoid. When members are being paid a regular salary of £400 per annum, forced dissolutions will become rare, and the unseemly scramble for the ministerial benches will become rare also. We have fewer forced or special dissolutions in Victoria since payment of members. The party of progress will be tempted to accept a compromise, or to back down on some excuse. But, to alter the constitution, you will need no dissolution. The ministry can let their followers keep their seats, and yet appeal, over their opponents' heads, to the people and the states. I fear that ministries will therefore be tempted to treat many proposed laws as amendments of the constitution—to bring in measures which can be passed under the constitution as measures for changing the constitution. This is not as it ought to be. We should not be under the temptation to put matters into the constitution as part of the constitution which could be dealt with under the constitution.

By the way, I wonder what Mr. Reid was about in submitting to this proposal. I did not expect anything so drastic. You may know that Mr. Reid, like Sir George Turner, has never shown any disposition to relax the restrictions as to altering the constitution. When Mr. M'Gowan, the labour leader in New South Wales, drew attention to the subject in the New South Wales Assembly, he carried his main proposal for liberalising the power of amendment by 58 votes to 22. But Mr. Reid was one of the 22. Now, Mr. Reid has been strenuous in insisting that New South Wales shall not be forced by the other colonies to surrender its land policy, its railways, its rivers (he calls the Darling and Murrumbidgee New South Wales rivers) to the federal control. Yet, would you believe it, under this proposal of the Premiers, Victoria, by combining with two or three of the smaller colonies, could force New South Wales and Queensland to part with all their railways, all their land policy, all their rivers, to the federal control, even though every elector in New South Wales said No to such an amendment. Of course, I am putting an extreme case; but it serves for an illustration. You see, therefore, that the proposal of the Premiers makes an addition to the subjects committed to the Federal Parliament too easy, from Mr. Reid's point of view. On the other hand, an alteration in the machinery of the constitution, for the purpose of dealing with admitted federal subjects, is still left too difficult. Suppose, for instance, it were desired to alter the constitution as to the giving of bounties by any colony from its own moneys. Under the bill, no state can give a bounty, even from its own moneys, except with the assent of both Houses of the Federal Parliament—and this assent may take a long time to get. Well, it is quite possible,

under the Premiers' proposals, for five out of every six Australian electors to say Yes to the proposed alteration, and yet the amendment would not be carried. Take these figures:—

Yes.		No.		
130,000	...	10.000	...	New South Wales
110,000	...	10.000	...	Victoria
37,000	...	3,000	...	Queensland
15,000	...	16,000	...	South Australia
6,000	...	7,000	...	West Australia
6,000	...	7,000	...	Tasmania
304,000		53,000		

That is to say, 304,000 vote for it and 53,000 against it, and the 53,000 have their way. The figures quoted are not at all unlikely—they are quite possible, having regard to the present relative populations and the voting last year. You see the people are asked to vote, but a minority—a very small minority, carry their way. This is the precious dual referendum of which Sir George Turner was so enamoured in the Convention. I say it is not the referendum at all, but a sham, a delusion, and a snare.

The truth is, Mr. Reid would have been much wiser if he had seized the valuable and statesmanlike distinction laid down in Mr. M'Gowan's proposal—the principle that no new subject is to be added to the federal area without the consent of each of the states, for they have consented to come in for certain subjects and for no others; but that the machinery for dealing with Australian subjects, federal subjects, shall be easily alterable at the will of the majority of the Australian people. This is the ideal aimed at in the platform of our democratic federal union. By failing to grasp this distinction between the two kinds of amendments, our Premiers have opened the door to what they so much dread, more than by anything that has been done—they have opened the door to the gradual unification of Australia—the throwing of more and yet more subjects into the control of the Federal Parliament, the further reduction of the powers of the legislatures of the several colonies. Just think of it again—one federal house, with the approval of an ordinary majority of the voters and of a majority of the states, can drag into the federal area matters which the colonies now deliberately resolve to leave to their local parliaments—matters such as the land laws, the education laws, the local Government laws, the factory laws, the railway systems. On the other hand, an accidental small majority in Tasmania, West Australia, and South Australia can prevent huge majorities in New South Wales, Victoria, and Queensland from making the smallest necessary change in the mere machinery

clauses. For what is good in this proposal, I give credit to Mr. M'Gowan and his friends in Sydney, who brought into prominence the importance of making the constitution more flexible : for what is bad in this proposal, I regret to have to blame our own Ministers, who have consistently opposed the giving of a liberal power of amendment, and who have always insisted on the precious, so-called "dual" referendum—a referendum under which 500,000 electors may say Yes, and 50,000 may say No, and the Noes have it.

I shall now leave the amending power, and pass to the proposal for settling "deadlocks" between the two Houses as to a proposed law. The expression "deadlocks" is inaccurately applied to ordinary differences as to laws : it strictly applies only where the differences are such that money cannot be obtained for the purpose of carrying on the Queen's Government. But let that pass. The proposal in the bill of 1898 was to dissolve both Houses, to send them to their electors ; and, if they still differed, to have a joint sitting, and to let a three-fifths majority carry the bill, if a three-fifths majority can be obtained. Suppose 74 members in the House, and 36 members in the Senate—these will probably be the numbers if Queensland come in, and West Australia, if we get the six colonies to federate. That would mean 110 members in all ; and if there were 65 members for and 45 against, the 45 would carry their way. If there were 53 for and 36 against, the 36 would carry their way. Well, as to this joint sitting, it was I that first objected to the three-fifths majority. I moved in Sydney that an ordinary majority should suffice. I was beaten. Mr. Reid, and the New South Wales members who voted, voted against me. But in Melbourne I brought the matter forward again, and Mr. Reid voted with me, but we were beaten. But this three-fifths majority at the joint sitting constituted so glaring an infringement of the wholesome democratic principle of majority rule, that it was one of the main grounds of the failure of Mr. Barton to carry the bill in New South Wales. Now, I find that the Premiers, in deference to the objections of New South Wales, propose to put away the stipulation for a three-fifths majority, and an absolute majority of the total number of members is to suffice. That is to say, if of the 110 members 56 vote one way and 54 the other, the 56 will carry their way. But there must be at least 56 to carry the bill. In effect, you must have a full house and no pairs. I have not much to say against this condition. Coming straight from the country after an election campaign on the double dissolution, in which the proposed bill has been the main subject of controversy, I have no doubt that the members pledged to support the bill, as well as the members pledged to oppose it, will be in their places. Therefore, I regard this proposed amendment as a

decided improvement on the late bill, although I do not attach so much importance to it as a gain as others do. After the double dissolution, we shall know who wins before the joint sitting. The numbers will practically be "up." The joint sitting will probably be very rare. Still, it is well to have the provision, as a weapon of final resort, should it be necessary. The coon said to the colonel, who was such a dead shot, "Don't fire, colonel, I'll come down;" and in the same way those who find themselves in a decided minority after a double dissolution will often yield rather than let a joint sitting take place. So this is a distinct gain for democratic principles—a gain which, as I may remind you, we should not have had if our too fervid orators, with what the *Argus* used to describe as "stirring perorations" about the glories of federation at any price, had had their way.

Next I come to the Braddon clause—the "Braddon Blot," as it is called in New South Wales. That provision is to remain for 10 years, and thereafter until the Federal Parliament otherwise provides. The Premiers have in effect shunted the whole financial difficulty on to the shoulders of the Federal Parliament. This Braddon clause, which is to last for at least 10 years, provides that the Federal Parliament shall not spend more than one-fourth of what it raises by way of customs and excise duties; the three-fourths go back to the states. The difficulty arises from the huge, the unprecedented borrowings of the Australian colonies. We have so much interest to pay each year on our debts that if we do not get back most of our customs revenue, some of our colonies (including Victoria) will become insolvent. We raise in Victoria about £2,000,000 per annum from our customs; and it is nearly all needed to pay the interest on our public debt. What with the loss of the sugar duties, and the intercolonial duties, and with our share of the expenditure caused by the Commonwealth, our local treasurers will retrench to the bone in order to avoid big deficits. This Braddon clause is a mere makeshift to prevent too big a deficit, and it is a very imperfect makeshift. But the Premiers propose that it may be swept away, after 10 years, by the mere authority of the Federal Parliament; and this encourages me. It means more flexibility—and I have always fought for flexibility. I have much hope that during these 10 years people will come to recognize the substantial similarity, in wealth and economic condition, of the several colonies in proportion to their population. One colony appears to be more prosperous than another while loan moneys are flowing in, while it is borrowing largely and spending lavishly. But taking one decade of years with another, the condition of the people in the various colonies is very much the same. Their habits of life, their food, their expenditure, are very similar. I have hope that at the end of

the 10 years the Federal Parliament will exercise the power conferred by another clause of the bill of taking over all, or proportionate parts, of the debts of the several colonies. This will free state treasurers of perpetual worry about his state's financial solvency, which otherwise will altogether depend on what an outside power, the Federal Parliament, may choose to do. I do not like the position with which we are faced, the solvency of Victoria depending on the course taken by the federal government. There is no precedent that I know of for such financial dependence of one government upon another—unless it be the Egyptian government depending upon the British—not a very brilliant example for us to follow. Such dependence would mean an unwholesome confusion of federal issues with state issues. The Victorian government would have to interest itself most strenuously, as a government, in elections for the Federal Parliament; and federal politics would be mixed up with Victorian politics, to the grave detriment of both. This Braddon clause is right, in so far as it prevents this absolute dependence of the Victorian government on the Federal Parliament; and the Premiers' proposal is right in so far as it trusts the good sense of the Australian people to devise a better scheme hereafter, when conditions are better known. But, unfortunately, the good sense of the Australian people is not quite trusted. For, by the device of a states' house, to check the people's house—a states' house whose members have a longer and firmer tenure than the members of the people's house, and represent whole colonies instead of districts in a colony—it is quite possible that one-fifth of the people, paying one-fifth of the taxes, will eventually have four-fifths of the control of the taxation and expenditure, will have more power over money matters than the members who represent the taxpayers in proportion to their numbers.

With regard to the capital, I need say very little. As compared with other matters, it is of small importance in which colony the capital is; and we all knew it was to be in New South Wales. But the words used by the Premiers in their proposal will lead to some difficulty. I notice that the 10 miles square are to be the property of the Commonwealth, as well as subject to the jurisdiction of the Commonwealth. So far as Crown lands are concerned, New South Wales will grant them for nothing; but so far as private lands are concerned, the Federal Parliament must acquire them by purchase. It must acquire them; but the owners are not obliged to sell, and I can foresee a nice fleecing of our federal funds. The Premiers ought to have inserted a power to take the lands compulsorily, after arbitration as to fair value. And they ought to have enabled the Federal Parliament to make laws for the local

government of the federal territory and for the exercise of civil rights by the inhabitants. But such is the pedantry of our constitution-makers that they must repeat the blunders, as well as the merits, of the American constitution. Just fancy the federal territory being under the absolute rule of the Federal Parliament, even as to lighting and drainage and police, and the people in it having no voice whatever in the election of federal representatives!

The provision with regard to the alteration of boundaries of states is little different from the original bill. It means, for instance, that Riverina cannot be separated from New South Wales unless not only the *Parliament* of New South Wales consent, but also the *people* of New South Wales, on a referendum. I regret the provision in the bill, for if there is anything to which the finger of destiny seems to point in Australia, it is to the subdivision of these huge, artificial, unwieldy, unmeaning divisions, defined according to arbitrary lines of latitude or longitude, which we call separate colonies. The bill is meant to interfere with that wholesome destiny.

As for the rivers, the Premiers propose to leave the clauses as they stand, with all their imperfections. I say here what I have said throughout, that the great river system of the Murray river, with its tributaries, should be made a federal matter, to be dealt with in the interests of Australia as a whole. As matters stand, no one knows what can be done with the rivers—whether New South Wales can dam back the Darling for irrigation purposes, or Victoria make the Murray a bed of caked mud in our summer heats. As a lawyer, I prophesy much litigation, much strain on the federal union on the subject of the rivers. I feel sure that if New South Wales felt that her great population would have due weight in both houses of the Federal Parliament, her representatives would have consented to federalise the rivers.

As for money bills, the position is as unsatisfactory as ever. There is nothing whatever to ensure that the national house, the House of Representatives, the house that will represent taxpayers in proportion to their numbers, shall have supremacy in regard to money bills, bills as to taxation and expenditure, and thereby have the making and unmaking of governments, the control of governments, the control of federal policy. The power of the senate to "request" amendments at any stage, to interfere with the supplies necessary to carry on the ordinary machinery of government, still remains absolutely unaltered; and unless the constitution be amended in this respect, the senate will become what the senate of the United States has become—the stronger and more prevailing house in money matters, the house that most frequently carries its way. The greater security and length of tenure which senators will enjoy,

as compared with the members of the House of Representatives, the election of senators by a whole colony in place of by mere districts in a colony, their freedom from dissolution (unless in the rare event of a double dissolution) will enable the senate to gradually assert a superiority, will make it the maker and unmaker of ministries. At the first no doubt the principal ministers may be found in the House of Representatives, as a consequence of old associations. But you may be sure that ministers will gravitate to the stronger house, the house that most frequently carries its way; and when the tug of war begins between the houses, we shall soon discover where the greater strength lies. Yet what can be more absurd and anomalous than that the house in which one-fifth of the people of Australia, paying one-fifth or less than one fifth of the taxes, and having possibly three-fifths or four-fifths of the voting power —that this house shall control the taxation and expenditure of the other four-fifths of the people of Australia, and, by means of control of the money, control ministers, control the policy of Australia!

I would also have you to notice that no attempt has been made to alter the quota system—the system under which you cannot increase the number of members of the House of Representatives, no matter how much the population of Australia may increase, unless you increase rateably the number of senators. To increase the number of senators, you must increase the number of the states, or the number of senators for each state. At the start we shall have one member of the House of Representatives for (about) each 53,000 of people. We may end by having one member for each million of people, if the states will not subdivide themselves; and every possible obstruction has been put in the way of subdivision.

Then, again, the Premiers propose to leave the equal representation in the senate as an unalterable fixture, as a weight round the neck of the federation, like the stone round the neck of the dog that you want to drown. Remember that the bill provides that this part of the constitution cannot be changed as other parts can be changed. An express exception is made as to equal representation. If New South Wales or Victoria have 100 electors for every one in Tasmania, Tasmania is to be as strong in one whole co-equal house of the federation for ever—unless Tasmania consents to surrender her right; that is, until something happens that can never happen without force. With miserable, narrow pedantry we have copied this irrevocable provision from the United States constitution. They were careful to avoid it in Canada and in Germany; but what was not good enough for Canada or Germany is treated as being good enough for Australians. Our ministers voted for it in the

convention. They excused themselves by saying that the smaller colonies demanded it. I deny it. Sir George Turner treated it as an essential federal feature in Adelaide. I have shown you what Mr. Glassey has said, speaking for Queensland. I have shown you what the labour leaders of South Australia have said. The working men, the masses of West Australia and Queensland, have never yet had a say in the matter. I would remind you also that to give undue power to electors in sparse populations, in thinly-peopled countries, is to give increased strength to politicians of reactionary, of anti-liberal principles. Liberalism and progressive principles are always stronger in great populations, where men meet frequently, discuss frequently, have access to the best thoughts that are going. Reactionary principles hold their own best in thin and scattered populations, where there is less friction of mind with mind, less combination, less intelligence. Believe me, the distinction which is drawn between men in populous states, and men in non-populous states, under which a man in a thinly-peopled state may have eight or nine or ten or 100 times the voting power that a man in a populous state has, is a mere blind, a mere stalking-horse for Tory principles. As I said before, scratch a States'-house man and you will find a Tory. Believe me, the interests of working men, of the masses, in all the colonies are solid. What is the interest of the toilers in Tasmania is the interest of the toilers in Victoria. There is no need for a states'-house. The states, as states, have nothing to do with matters which pertain to Australia as a whole. The states have their own matters, reserved for the states to attend to. The conflicts which have taken place in the United States have not been between the populous states and the thinly-peopled states. This teaching which we have had, about the importance of protecting the smaller states against the greater states, is very like the teaching which Frenchmen and Germans have as to the clashing of the interests of France and Germany. Soon the masses of both countries will realise the solidarity of their common interests; and I think that the masses in the Australian colonies will soon realise the same truth as between themselves.

I should like here to ask what those gentlemen have to say for themselves now who preached so strenuously last May that if the bill were not accepted by the colonies on the 3rd of June, we might say farewell to federation for our generation, for 50 or 100 years—perhaps for ever. Sir George Turner is reported in the *Argus*, of June 1, as having said that "If we neglected this opportunity there were very few of us who would ever have another opportunity. If we neglected it, it would be a national disaster, and an everlasting disgrace to the people of Australia." Mr.

Deakin is reported in the *Argus* of May 28 as having "reminded his hearers that it had taken many years to bring federation to its present advanced stage, and he would venture to say that if the people turned their back on the present opportunity another would not present itself in the life of any man then present." The truth is the problem is as live a problem as ever, although the bill has not been carried. Australia will have no rest until the problem is settled. Federation, the union of the Australian people for subjects of common concern, is a necessity of our circumstances. The facts of our peculiar and isolated position render it necessary, absolutely necessary. Sir George Turner is reported to have said recently that if this attempt at federation fail, he will have nothing to do with any further attempt. I hope that he never uttered such an impotent and insolent threat. The forces that move Australia to federation are too strong for any politician, however eminent, to withstand. It will be, it must be, consummated; but we have nothing to lose by a wise delay. We have everything to gain by a careful attention to the conditions of the partnership before we enter into it under a compact binding, not only ourselves, but our children, and our children's children, indissolubly. We have gained by every delay which has been interposed. The bill of 1891 was better, more national, more liberal, than the Federal Council Act. The bill of 1897 in Adelaide was more liberal, more national, than the bill of 1891. It was made still more liberal, more national, by the amendments in Sydney, and again by the amendments in Melbourne in 1898. It has now been made more liberal, more national, by the amendments of the Premiers; but there is still plenty of room for improvement. I would like you to mark what Mr. Deakin said in the Federal Council the other day. His object was to induce Mr. Dickson, of Queensland, and Sir John Forrest, of West Australia, to become advocates of the bill with such amendments as the Premiers should recommend. They were inclined to ask, you know, for another convention. What did Mr. Deakin say?—"I hope that, on reconsideration, even our friends from Queensland will note that, just as the measure of 1891 was an advance on the Federal Council Act of 1884, which established this council—a distinct advance in a liberal direction—and just as the measure of 1897-8 was another advance towards unification on the bill of 1891, if another convention were called together there is a very large section in New South Wales, in South Australia, and in this colony who would endeavour still further to enlarge the popular powers. I would ask my honourable friends, therefore, to remember that, if that effort were successful, they might find themselves confronted with what should be to them a less acceptable measure than this. The set of the tide is unmistakable. It has been from first to last—from the inception of the federal move-

ment to the present time—in the same direction. I admit that it cannot advance indefinitely. Complete unification is not sought, and is certainly not provided for at present. The amendments proposed by New South Wales, or some of them, are in the same direction—which appears to be the trend of the whole of Australia—and therefore they may well ask themselves whether they would not act wisely in accepting this measure with its imperfections." Well, you see Mr. Deakin's advice to the Premiers who had not consulted their electors, to Premiers who have not been regarded as very favourable to democratic aspirations—his advice was, "Take this bill, for if you don't a more democratic, a more national bill, will follow, and be forced on you." For the very reasons which induced Mr. Deakin to recommend Mr. Dickson and Sir John Forrest to take this bill, I should like to see some delay in taking the bill. Mr. Deakin's words are absolutely true—"The set of the tide is unmistakable"—in a liberal, in a national Australian direction. Well, I confess that I should prefer to take the tide at the full. We have known skippers to wreck their ships by trying to clear the bar, and get into the open ocean before the tide was at full. But I have done my duty, I hope. Of course, Victoria will give a big majority for this bill, as it is more in accord with the liberal principles of Victoria than the previous bill. All that we can do is to keep bravely on high the flag of a broader, a saner, a nobler Australian brotherhood.

The Problems of Federation.

The Legislative Council of New South Wales, having refused to pass the enabling bill framed to enable the commonwealth bill, as amended by the six Premiers in conference, to be submitted to the vote of the people of New South Wales for acceptance or rejection, certain additional members were nominated by the Executive to the Council, and the enabling bill was thereupon passed.

The following address was delivered at the Hibernian Hall, Swanston Street, Melbourne, on the 3rd May, 1899, at the request of the Hibernian-Australasian Catholic Benefit Society.

The Problems of Federation.

An Address by Mr. H. B. Higgins, M.L.A., Delivered at the Request of the Hibernian Australasian Catholic Benefit Society, on May 3, 1899, at the Hibernian Hall, Melbourne.

WHEN your great association asked me, some two months ago, to give an address on federation, I thought it better to decline, until we should learn the fate of the Federal Enabling bill in New South Wales. But now the bill has been passed by the New South Wales Parliament—with a certain strain upon the constitution, it is true [A]—but it has been passed; and the federal scheme of 1898, with the Premiers' amendments, is to be put for acceptance or rejection before some, or all, of the Australian colonies. My address this evening will therefore touch a pressing issue of politics; but I do not want to deal with the subject in the controversial spirit of an advocate or an opponent. Perhaps we have had a little too much mere advocacy and recrimination; too many "stirring perorations," and too little quiet thinking. I should like you, if possible, to look at the bill as the people of Australia will look at it 50 or 100 years hence. But that is the difficulty. It is very hard to get people to think over consequences even 10 or 20 years hence; and it is still harder to get them to realize that this bill is not an ordinary bill, which can be readily repealed or amended if it do not suit. It is, of course, to be a final and binding compact, from which the people of Australia are not to extricate themselves, except by defiance of the law—by revolution. Even revolution would be a difficult matter, if—as is intended by the bill—the Imperial power is to be always held over our heads ready to keep the peace and to enforce the law. You probably know that I took the responsibility, although a member of the Federal Convention, of opposing the late bill. I opposed it, not because I did not see the value and the need of federation, but because I conceived that the Australian people are worthy of something better than that bill. I regarded it as a bill which would prevent the true fraternal union of the people of Australia in matters of common concern, and for ever—as a bill got by pedantry out of provin-

(A) The Government of New South Wales nominated additional members to the Legislative Council of New South Wales, when the Council refused to pass the Federal Enabling bill, which provided that the Commonwealth bill of 1898, with the Premier's amendments, should be submitted to the vote of the people.

cialism—a bill to perpetuate provincialism. It is, therefore, a matter of much gratification to me to find that the amendments made by the Premiers, amendments forced upon them by the criticisms of opponents of the bill, are in the direction which I regard as right. I cannot find that any one of the Premiers' amendments is retrogressive, reactionary. We are only beginning, however, to appreciate what a true federation means. The movement, indeed, is about 50 years old. It was mooted when the separation of Port Phillip from New South Wales was discussed. But the details of the federal scheme have never been properly faced till about two years ago. In 1891 the delegates came together with the notion that they had merely to give to Australia the peculiar constitution of the United States, with something, more or less, of the British system of responsible Government thrown in to flavour it. Then we sat down in 1897 with the 1891 scheme before us, and with certain fundamental assumptions—unjustifiable assumptions—as to what is necessary for any federal scheme. I am not surprised at our making such a mistake. As Guizot said: "Of all the systems of government and political guarantee it may be asserted, without fear of contradiction, that the most difficult to establish and render effectual is the federated system: a system which consists in leaving in each place a province, in every separate society all that portion which can abide there, and in taking from it only so much of it as is indispensable to a general society, in order to carry it to the centre of this larger society, and there to embody it under the form of a central Government."

The essential problems of a federation, as you see, are to separate the federal subjects from the subjects left to the several states, and to devise appropriate machinery for the new Federal State. Our object, therefore, in Australia should be to create an organization which shall give effect to general Australian public opinion on Australian subjects, on subjects which the several states recognise to be matters of general Australian concern; to get Australians to act together as a nation in national Australian matters; and any device which interferes with this end is a mistake. But the reasoning of our political leaders has been something like this:

> The United States have a Federal Constitution;
> The United States have been remarkably successful in achieving wealth;
> Therefore, the United States Constitution should be adopted by Australia.

I fear there is some truth in Göthe's criticism of the English—that they are pedants. When concrete, physical difficulties are before them, they are more practical, probably, than any nation.

But in dealing with the distant and the general, they lose sight of realities of things, they follow what is conventional, they are led by phrases, they mistake the temporary for the permanent. The British Constitution has been a great success, because it has never been set out in black and white, in a systematic, final, unbending scheme. If it had been so set out, say at the revolution of 1688, it would probably have been drawn up on the basis of the existing conditions, so as to bind future generations, and would not now be showing the results of a free, healthy expansion during 200 years. Each century gradually modifies the constitution to suit its needs. There is, fortunately for us, no restriction whatever on the power of the British Parliament to change the constitution absolutely as it pleases. A constitutional change may be made by an ordinary majority in two houses, by the same machinery as is necessary for putting an extra penny per gallon on imported wine, or for amending the law as to registration of dogs. By the British constitution the good sense and justice of the members, responsible as they are to the people, are implicitly and unreservedly trusted. This trust, this confidence, is what we should find in any Australian Federal Constitution. If you are not to trust the people as a whole in dealing with the people's affairs as a whole, whom are you to trust? We certainly cannot put greater trust in the wisdom of a lifeless piece of parchment, written now, but sure to be unsuitable for the conditions of future centuries. Now, keeping steadily in view the two main problems in any federal scheme—the division of subjects, and the devising of appropriate machinery—and keeping in mind also the advantage of allowing the machinery, when worn out or inappropriate, to be replaced or improved, I would have you to notice, first, the claptrap of certain favourite arguments which were used to push forward the late bill. "Don't bother about the amending power," say some; "do you mean to tell me that people of Anglo-Saxon blood will submit to any constitution that does not suit them?" Yes, I do mean to say so. That Anglo-Saxon bravado is rather inapt in this connection. If there is one characteristic which is more marked than any other in our British and American communities, it is the general respect for, and obedience to the law, so long as it is law. A small minority, if it has the law on its side, has, with us, much the best of a struggle. During the Chartist rising there was a picture in *Punch* of one of the enrolled special constables meeting a huge and fierce Chartist labourer. The special constable is a little shopkeeper, who would be helpless in the hands of his big brawny opponent. "Now, look here," says the little fellow, "if you kill me, why it's murder; but if I kill you, it's all right." That is the way Anglo-Saxons regard the law. In the United States also, in

1861, the leaders of the southern states had to convince their followers that secession was within the powers conferred or reserved by the constitution before the southerners would consent to secede; and Lincoln and his friends had to instil into the northerners, and especially the northern democrats, the conviction that the constitution made the union perpetual, and that he was going to fight against individuals and not against States, before the North would unite to prevent secession. Why, the whole fight was based on rival interpretations of the constitution—each party claimed to be upholding the law, not breaking it.

Another argument used with an air of great profundity is, "History shows that perfect constitutions never work well. Do not attempt to get a perfect constitution—take what you can get, you can never get all you want." I suppose the natural corollary of this doctrine is that we should try to make the constitution imperfect—put flaws into it on purpose, for fear it should be perfect. But the doctrine is not true. What perfect constitution has not worked well? If you show me, in history, any constitution that has not worked well, I will simply say it is not a perfect constitution, or even a workably good constitution. Where, then, are these historical instances? A constitution is, in this respect, like a piece of machinery—it is meant to work, and if it does not work it is not perfect, it is not even good. But my objection to the late bill was, not that it was not perfect, not even that it was bad in material points; but that no efficient power was reserved for the future people of Australia to make it better when they want to, and that the bill actually created insurmountable obstacles in the way of improvement.

"Oh, but," we were told by Mr. Deakin, "we have a power of amendment. Not too easy a power of amendment—a healthy man does not want to be always taking drugs." This was a fetching argument; but, I say it with all respect, this also is claptrap. A healthy man does not want to be always taking drugs; but that is no reason for putting drugs out of his reach. I want to know, are we to treat the free people of Australia as a two-year-old child for ever, from whom we put the bottles away under lock and key, or so high that he cannot reach them? Take this for certain, that any restriction on the power of amendment is really prompted by a distrust of the people, of the general average of good sense and just feeling in the community. Finally, and as the clinching argument, our leaders in politics shook their wise heads and assured us, "If we do not take the federation offered to us by this bill, there will be no federation in our time, or for 50 or 100 years. The minor states have gone to the utmost limit of concession, and will yield no more." What do we find? That federation is as live an issue as ever, and presses

on us with irresistible force until the problem has been solved; and that within the past week one of the minor states, South Australia, has agreed, by a majority of nearly four to one, to the bill with amendments which operate against the privileges of the minor states, whereas it agreed to the late bill by a majority of only two to one. So that argument also is claptrap.

Now, since this federal problem has been before us, I have read a great deal about the history and the development of politics in the United States, and I say unhesitatingly that the chief difficulties and the chief sores in public affairs of the United States have been owing to the inflexibility of the constitutions of the federation and of the states. Take, for instance, the movement for the reform of the public service. You know that they have had in the United States, for very many years, what is called the "spoils system." The victorious party at the election for the presidency removed the public servants appointed by the other party, and put in office men of its own. Democrats were turned out by the republicans, and republicans were turned out by the democrats. You have thus two great armies of partisans, deeply interested in the success of their party—the office holders and the office-seekers. What was the difficulty in the way of abolishing this pernicious system? It was a difficulty of the constitution, and it is almost impossible to amend the constitution: for the constitution gives the president the right to nominate public officers and to remove them, and no Act of Congress can take it from him. Take again the peculiar difficulties which exist in the United States in consequence of the tremendous powers and influence of the great corporations. These corporations, existing for private gain, are strong enough frequently to control legislatures; they are the centres of "log-rolling" and corruption; they often levy blackmail on the public. We have hardly anything to be compared with them in Australia. Professor Adams has shown, in his work on "Public Debts," how the corporations have attained their position, and have seized monopolies which the states ought to hold or to control. It appears that the State Constitutions have, generally, provisions forbidding the state to borrow, limiting the power of the state to pledge its credit for public purposes, debarring the state from carrying on public undertakings; and, in imitation of the Federal Constitution, the State Constitutions are made too rigid. The result is that the wide area of operations in businesses which have the nature of monopolies, from which the state is excluded, has to be thrown open to private greed, to huge financial companies. The corporations do the work which the state ought to do; and they work for their own gain, whereas the state would have to keep in view the general public advantage. Take again the great civil war of the sixties. When the crisis

was approaching, desperate efforts were made to secure now one amendment, now another, of the constitution—amendments which would have satisfied the great body of moderate men of both parties, and prevented that terrible waste of life and of resources which the war involved. But the amendments could not be carried—the constitution was too difficult to amend; and the contending parties flew to arms. From 1804 to 1865 not one amendment was carried in the constitution of the United States, although the conditions of civilization were changing more rapidly than in any previous epoch of the world, and nowhere so rapidly as in the United States. Years were spent in endeavours to procure an amendment of the constitution providing for a reform in the mode of choosing presidential electors; but the efforts were fruitless. Strenuous attempts were made to get an amendment of the constitution allowing congress to make internal improvements, to construct roads and canals; but to no purpose. As Mr. H. J. Ford says in his masterly treatise of last year on the "*Rise and Growth of American Politics*": "The conditions required for amendment of the constitution are so many, and so rigorous, that in the ordinary course of politics it is impossible to satisfy them." "In the ordinary course of politics"—yes. It is true that there were three amendments passed from 1865 to 1870 —amendments which secured the civil rights of the negro and abolished slavery. But these amendments were the fruit of the civil war; and even then they could not have been carried, only that the conquerors treated the rebel states and the rebel inhabitants as having their federal rights suspended in consequence of insurrection.

Now, is it not an amazing piece of pedantry, that in spite of the experience of the United States, the framers of the Australian constitution in 1891 and in 1898 imitated the constitution of the United States in its rigidity? If the late bill had been carried, not a word could be amended, unless you got, first, an absolute majority of the whole number of members of each house; and that, as we know from our Victorian experience, is very difficult to get. Until the two Houses agreed by an absolute majority in each, no more could be done. But afterwards you had to get a poll of all Australian electors; and, even if five-sixths, or nine-tenths of the Australian electors voted in favour of the amendment, it was not necessarily carried. You had to get a majority of the states to consent also. You might possibly find all the electors in the three most populous colonies, and nearly half of the electors in the three less populous colonies, in favour of the proposal; but the proposal would be treated as rejected. They told us that a federal constitution ought to be made more difficult to amend than an ordinary constitution. With one qualification

which I shall state presently, that is another piece of clap-trap. There is no valid reason whatever for making a federal constitution more rigid than the constitution of a single state; the more elastic the power is, in the hands of an order-loving people, the better it is, except, it may be reasonably said, as to the subjects of legislation to be committed to the Federal State. Any state entering into a federal bond may reasonably say, "We are willing to federate as to certain matters of common concern—matters which can better be dealt with by the people of the federation, as a whole, than by the people of each state separately. We are willing to give up to the common control questions of customs duties, of foreign commerce, of bankruptcy, of defence. We are willing to 'pool' these matters. But you must not take away any other subject of legislation without our consent. We are not willing to give up to the federation questions of education, of local Government, of land laws. The general mass of public opinion, through the federation, should have its way as to the matters which we have pooled, not as to the subjects which we have not pooled." Now, it was on these lines that Mr. M'Gowan, the leader of the labour party in New South Wales, tabled, and carried, his amendment of the late bill. He was willing to yield to the alleged dread of unification so far as to provide that as to subjects reserved by the states, and kept from the federation, no state should be compelled to part with any of them without its consent. But, as to Australian concerns—as to admitted Australian subjects—the majority of Australians should rule. I think you will admit that this position is consistent and reasonable.

Now, what do the Premiers propose? I was agreeably surprised that they proposed anything. Mr. Reid had voted in the New South Wales Parliament against the main part of Mr. McGowan's amendment. Sir George Turner had not shown any appreciation of the importance of the matter—Premiers have a lot of things to think of. They are more disposed to look at the immediate exigencies of their Ministry than at the future results of policy. As for the other Premiers, it was to be feared that they would refuse to assent to any proposal tending to diminish the power of the less populous states. But the pressure of the opinion of the New South Wales Assembly, and of the opponents of the late bill in New South Wales and in Victoria, had a marked effect. The Premiers propose to take away one of the obstructions to amendment; they propose to render unnecessary the consent of one of the Houses, if the other House carry the amendment twice, within the same session with an interval of three months, by an absolute majority. I do not deny that this is a great step in advance. It means, as I have said elsewhere, the taking away of one of the four consents which the late bill

rendered necessary before there could be any amendment of the constitution. It means, in all probability, that the general public opinion of Australia, which will be fairly represented in the House of Representatives, will be able to appeal from an obstructive senate direct to the people and to the states. We shall only have to look for three consents instead of four to any amendment which general public opinion may require—the consent of the National House, the consent of the Australian nation on a referendum, and the consent of a majority of the states.

But now let me indicate to you four obvious objections to the power of amendment as it has been left by the Premiers' proposals. In the first place, as you have to get the consent of the states, as well as of the nation, you are liable to have general Australian public opinion defied by a petty minority of voters. Five out of six voters may say yes to the amendment, and the sixth may say no; and the noes have it. As you have to get the consent of the states, 10,000 voters in Western Australia will count for as many, will have as much legal force, as 100,000 voters in New South Wales. Undue weight is given to voters in thinly-peopled colonies; and it must be remembered that in thinly peopled countries, in scattered communities, public intelligence is not so awake, public spirit is not so developed, progressive principles are not so well apprehended, as in the midst of large populations. In the second place, the proposal tends distinctly to unification, instead of federation of the Australian colonies. It opens the way for the federal power to encroach more and more on the powers reserved at present to the several states, to add subject after subject to the scope of the federal constitution, and, perhaps, finally to leave the States' Parliaments with no business to do. For instance, the land laws and education are matters reserved to the states. Suppose that a movement is set on foot to add education to the federal scope, to make it one of the subjects for the federal parliament. All that has to be done is to get one more than the half of the members of the House of Representatives to vote for the change, and (after the senate has twice rejected it), to get a majority of the people of Australia, and four out of six states, or three out of five states to consent. New South Wales may find its land laws and its land revenue appropriated by the federal power, against the wishes of all the New South Wales members, and against the wishes of all the New South Wales people. This result is owing to the Premiers having failed to see the point of Mr. McGowan's amendment as carried by the New South Wales Assembly. Unification of all the Australian colonies may, or may not, be a good thing. But that is not what is meant by federation; and if the minor states consent to a proposal so obviously pointing towards unification,

it shows me that they will consent to almost anything—that our fear of deterring them from federation if we did not allow them certain unjustifiable concessions was wholly groundless. The tendency of the larger, the federal organisation, is always to absorb the functions of the smaller powers, the states. In the third place, it will be actually easier for a Government, when it finds that the two houses disagree on an important measure, to get it carried as an amendment of the constitution than as an ordinary law under the constitution. Suppose that an Old Age Pension bill is to be brought in, and it is known that the Senate will reject it, or (what is much the same thing) so amend it as to defeat its object. The Ministry know that on its rejection by the Senate there is no course open—if it be brought in as an ordinary bill under the powers given by the constitution—but to get a double dissolution, a dissolution of the two houses; and, if the bill be again rejected, there is a joint sitting of the members of both houses. But honourable members do not like dissolutions; and they will like dissolutions still less when £400 per annum is attached to a seat in the Federal Parliament. Pressure will be brought on ministers to bring in the proposal in the form of an amendment of the constitution. There is nothing to hinder such a course; the constitution does not limit the nature of the amendments which may be proposed; and arguments can easily be found in favour of making such an important proposal a constitutional concern. By this course, when the senate obstructs, there will be no need for members to undergo the worry, the risk, the expense of a general election; they will retain their seats, and throw the responsibility of accepting or rejecting the measure on the electors. This aspect of the proposal of the Premiers seems to me to present very grave dangers. I may add that there are other reasons to induce a Government to adopt the system of legislation by way of amendment of the constitution rather than by way of making an ordinary law under the constitution. I refer to the provisions of sec. 57 of the bill, which prevent a double dissolution within six months before the time at which the House of Representatives would be dissolved by ordinary effluxion of time. The senate will generally be able to prevent the double dissolution by adopting Fabian tactics of delay until the six months' term has begun.

In the fourth place, the Premiers still retain that exception to the amending power, which forbids change in the system of equal representation of the several states in the senate. This system, which gives a colony like Tasmania equal weight, in one of the two co-equal houses of the federal parliament, with New South Wales or Victoria, which gives voters in a scattered and sparse population more political weight than voters in a

dense population; and the smaller the population the greater the weight of the voter, the larger the population, the less the weight of the voter; this system is to be continued for all time. The bill, as it left the Premiers' hands, still provides that no amendment of the constitution can effect this inequality of voting power, an inequality which must grow as time increases. An equal representation of the states means an unequal, a glaringly unequal, representation of the people. We cannot safely prophesy; but everything at present points to the existence of a great population on the eastern and south-eastern sides of this continent. But even if the population of an eastern state should be one hundred, one thousand times, as great as the population of a drought-stricken sandy desert in the west, the desert will have as much voting power in one of the two equal houses of parliament, unless the people of the desert consent to forego their advantage. It is just the same as if there were in the Victorian constitution a provision, unalterable, that for all time the County of Croajingolong, or one of the north-western counties of the Wimmera, should have the same number of members in one of the Houses of the Victorian Parliament, as this County of Bourke.

Now, this extraordinary system has been adopted in Chinese imitation of the constitution of the United States, in disregard of the bitter experience of the United States, in disregard of the more recent examples set by Canada and by Germany. If you read carefully the history of the United States, you will find that the unjust Mexican war, the annexation of Texas, the furious struggles in the creation of the western states, were owing to this system. The slave-holding south struggled to get into the union as many slave-holding states as possible, as this tended to keep up the preponderance of the slave-holding interests in the senate, where each state had equal power. The slave-holding interests had no chance in the other House of Congress, where the great populations of the rapidly developing north had their due weight, and where the growing public opinion against slavery had due expression. The population of the Southern States remained almost stationary, while the Northern States absorbed all the population that Europe could send them. It was the struggle over slavery in the territories, or not yet organised states, that led to the great civil war. It was equal representation that defeated the beneficent proposal for an arbitration treaty with England four or five years ago. It was pointed out that the treaty was thrown out in the senate by the "rotten borough and sage-bush states," such as Nevada and Kansas. It is hard also to over-rate the importance of having particular interests represented in any house in proportion to their popular strength—in proportion to the number of people affected by that interest. Mr.

Ford says (1898): "In the house, the weight of particular interest is proportioned to their popular strength, but in the senate there may be a very great disproportion. Nevada, with a population of 45,761, has the same representation in the senate as New York with 5,997,853. Thirty-two million people in 10 states are represented by 20 senators, while 29,000,000 people in other states have a senatorial representatien of 68. On Feb. 1, 1896, the senate substituted a free silver bill for the treasury relief bond bill passed by the house, by a vote of 42 to 35; but the minority represented nearly 8,000,000 more people than the majority." The truth is, we have been pedantic enough to accept and to treat as a fundamental axiom of federation, a device which was accepted with great unwillingness and distrust by the strongest men among the framers of the constitution of the United States—accepted by them merely because the only alternative was anarchy and loss of independence. It is interesting to know that so clear a thinker as the late Walter Bagehot utterly repudiated the device as being essential to federation; and Dicey and Freeman concur with him. When the American fathers of the constitution were urging the people to accept it in 1789, their stock argument, when they had to excuse this absurd device, was that the House of Representatives, with the people on its side, would always be in the ascendant. It was supposed that the House of Representatives would be another House of Commons; and for some time there is no doubt that it was the stronger house. But the pressure of stubborn facts, in the struggles between the houses, has altogether reversed the position. The senate has become the stronger house. The highest prerogative of the House of Representatives, the control of supplies, has been relinquished. "The senate loads up the appropriations with grants which should have no consideration except as independent bills reported from competent committees." It is in the senate that the great party leaders, such as Webster, Clay, and Calhoun, were found. "At present," says Ford, "the Government is subject to the rule of an oligarchy entrenched in the senate." In a recent article in the *Forum*, Senator Hoar—although a zealous defender of the senate—says as follows: "We choose our chief magistrate every four years, and the members of one house of congress every two years. One-third of the senators go out of office every two years. The term of office of an individual senator is six years. The senate is controlled by the majority of the states. A majority of the people cannot change the policy of the country unless a majority of the states also consent. A senator must be a citizen of the state from which he is chosen. Thus, no change in the popular opinion can compel a change of policy during the four years of the president's term, nor can it compel a change of policy in a

body where great and small states meet as equals, unless a majority of the states agree to the change. But the purpose and desire of the numerical majority of the American people may be baffled for twenty years by the local interests and feeling of a majority of the states, and those, perhaps, the smallest in population."

The subject of the dominance of the United States senate brings me, by a natural transition, to consider whether the same result may be expected to occur under the amended bill, and, in this connection to consider especially the money powers of the two houses. I am surprised that in the criticisms of the late bill in New South Wales more prominence has not been given to the money powers of the two houses. There is in the late bill some affectation of limiting the power of the senate with regard to money bills; but the limitation of its powers is verbal, not real. Can anyone point out any difference, except in words, between sending back a money bill to the House of Representatives with amendments proposed by the senate, and sending it back with amendments "suggested" or "requested" by the senate? There is none. It was stated that the Legislative Council of South Australia has had a similar power for many years. This statement is not true, as will be obvious from a reference to a paper laid upon the table of the convention, compiled by Sir Richard Baker. The powers of the two houses with regard to money bills will be equal; but the position of the senate and of its individual members will be stronger; and the senate will, as in the United States, assert its superiority in disputes as to money bills. Consider that the House of Representatives has to undergo a general eletion every three years at least, and that the senate has not; consider that a senator holds office for six years; that the senate is practically continuous, half the members having to retire every three years; consider that a senator can boast that he has behind him the votes of the electors of a whole state, while a member of the other house represents only a district. Which, now, will be the stronger house when the tug-of-war comes? We are going to try to apply the system of responsible government, ministries responsible to parliament, ministers resting their position on a parliamentary majority, to a constitution which creates two houses co-equal in all powers. It has never been done before; and no one has shown how it can be done now—unless, perhaps, if one of the houses secures an advantage by the prestige and tenure of its members. The senate will have such an advantage. It will have equal authority and more strength. At first, probably, the chief ministers of state will be in the House of Representatives. But strength and weight will tell, and pretty soon. That strength and weight, in political conflicts, will be found to be in the senate,

and to the senate ministers will gravitate. The chief control of ministers, the whiphand over ministries, will pass to the senate; and the house in which the minority of the people of Australia holds the great majority of votes, the house in which one-fifth or one-sixth of the people, paying one-fifth or one-sixth of the taxes, will have three-fifths or four-fifths of the voting power—that house will have the chief voice in the taxation and expenditure of the people of Australia!

Suppose, then, that you find that, as in the United States, the senate has the dominance in money matters; suppose that, in consequence, it has the chief voice in the making and unmaking of ministries; suppose that the ministry and the senate are in accord as to policy, what effective check is to be found on the power of this "oligarchy entrenched in the senate"—to use Mr. Ford's words? In the United States they have the president, with a power of veto on all proposed laws, a power which is not merely nominal, as in the case of England or of the British colonies. The president of the United States has, during the term of his office, extraordinary executive powers—powers in active exercise, powers which exceed the powers of any constitutional monarch. The president elected (practically) by popular voice, is the check on the senate of the United States. He voices the aspirations, the views, of the great bulk of the people. And when the senate, in endeavouring to further particular and private interests, comes into collision with the general interest, the president, with his tremendous power, can protect the general interest. There is not any such protection provided by our constitution. The ministry, supported by parliament, can do anything; and as I have pointed out, the senate will have the predominant voice in parliament. I will confess to you that I feel much misgiving about the position: and I think that, under the circumstances, you will not be surprised. The evils which have arisen in the United States will arise here, and in an accentuated form. For the senate will be stronger than the United States senate, by virtue of the fact that it is elected directly by the people of the several states, and not by the legislatures of the states; and the people of Australia will not have the protection of a president's power.

You will have observed that I have not said much about the financial problems dealt with in this bill. It is not because I do not recognise the difficulty of the problems; it is not because I admire the attempt at solution. The crux of the difficulty lies in the unprecedented borrowing of these colonies, and the huge annual interest which has to be paid on our debts. Victoria, for instance, has to give up to the federation all her customs and excise revenue, and, unless she receive the greater part of it back, she would become insolvent. The interest on her debts, and the

customs and excise revenues, are, at present, about the same amount—£2,000,000 a year. Tasmania's position is still more critical. Therefore, it was that Sir Edward Braddon proposed and carried a clause, that of the nett revenue from customs and excise not more than one fourth should be used by the federation —the other three-fourths should be distributed among the states. But in what proportion? There is the rub. The bill provides that, for five years after uniform duties have been imposed—that is to say, for about seven years in all—each colony shall be credited with the amount collected in it. After the seven years, the Federal Parliament has to settle the proportions for distribution. *There* is a pretty apple of discord, of perpetual discord, thrown among the colonies. If one wanted to create bad feeling among the colonies, to promote dissensions, to encourage "log-rolling," and all kinds of unfair combinations of states against states, I do not think we could desire anything better than this, especially when it is combined with a states' house, in which small populations are given an unfair advantage over large populations. The only modification of the financial clauses proposed by the Premiers is that the Braddon arrangement, by which three-fourths of the customs and excise are to be returned to the states, is to last only for ten years, and thereafter until the Parliament otherwise provides; and, during the same term, the Government may grant any state financial assistance. So, after the ten years, the Federal Parliament will be free to raise merely enough revenue to answer its own purposes: it will altogether depend on the Federal Parliament whether the states shall be solvent or not. There need be no surplus to return; and, if there be any surplus, the Parliament has absolute power to say how it is to be divided. On the one hand, it is easy to foresee that a State Government will have to use all the power and the influence that it has to induce the Federal Parliament to adopt such a customs and excise tariff as will suit the needs of that state. This means an unwholesome importation of state issues and state party struggles into the elections for the federal houses, which is contrary to all the canons of political wisdom, based on political experience in all constitutional countries. On the other hand, if, and so long as a large surplus is secured for any state, the Executive Government of that state receives a large revenue, for which it is not dependent on the state parliament, or on the people who are behind the state parliament. If there is one thing which the history of British liberty teaches us clearly, it is that the Government should not be in a position to get money without the consent of Parliament, from some source outside Parliament. Now, the ridicule which was so freely poured out here on the New South Wales objections to the "Braddon blot," as it was

called, was simply silly. We ought to understand an opponent's views before we condemn them. An attempt has been made here, and is still being made, to make out that all the opposition in New South Wales to the late Federal Bill was owing to jealousy of Victoria, and the desire to get the capital in Sydney. This attempt is unfair, and exposes us to deserved ridicule in return. I may say, in passing, that I have received, this evening, copies of the speeches of Mr. Holman and Mr. Haynes to Sydney audiences; and in those speeches I cannot find one reference to the question of the capital being in Sydney. That point seems to interest rather the property-owning and importing classes than the great masses of the people. The fact is, that New South Wales can afford to do at present with much less customs and excise duties than we can, for it has a great land revenue. It collects about £1,500,000 at present; after federation the tariff would have to be increased so far as to enable Tasmania and all the other states to meet their financial obligations, that is, to a sum estimated at £10,000,000 or £11,000,000. Of this great sum, New South Wales would raise not far from £4,000,000, which means a great increase in the taxation of New South Wales during the first seven years; the extra amount raised by New South Wales would go, wholly or in part, to the New South Wales Treasurer, to increase his revenue—it would not go back to the people's pockets. After the seven years, parliament would have to provide the mode in which the surplus revenue from customs and excise should be distributed; and here, if not before, comes in the great temptation for the minor colonies to use their unfair advantage in the senate, to combine, and enjoy much of the money which New South Wales taxpayers contribute. Therefore, it is not so wonderful that New South Wales objected to equal representation in the senate; and we come back to the same point, the constitutional flaw. If our leaders had struggled with the same zeal to give to New South Wales the just position as to representation to which her great population entitles her, as they have struggled to give West Australia and Tasmania advantages to which they are not justly entitled, most of the difficulties of federation would vanish, or, at least, any temporary injustice or inconvenience could be ignored in the confidence that they would be rectified by the general good sense and justice of the united people of Australia. No doubt Mr. Reid says that he has obtained the utmost concessions that he could from the minor states; but you must recollect the peculiar and difficult position of Mr. Reid and his Ministry. I firmly believe that New South Wales could have obtained federation on any just terms that it thought fit to impose.

I am fully sensible, as aware as any of you can be, that this

address of mine cannot be attractive, cannot appeal powerfully to the sentiment and imagination of the people, will not even be read or considered by the great masses of voters who have so many other more urgent things of the present time to attend to, than the effects of a proposed constitution on their children and their country. But you have invited me to address you on this subject, and I am trying honestly to give you my views, after careful consideration. I have even reduced my thoughts into writing, lest I should be tempted into inaccuracy or exaggeration. I am not asking you to vote in one way or the other should the question of the acceptance of the amended bill be submitted to you. The agricultural classes here seem to confine their attention to the effect of the abolition of intercolonial duties on their land, and the prices obtained for their produce. The commercial classes seem to treat the proposal for federation as they would treat a mere proposal for an alteration of the tariff; and to look to immediate effects on trade, and to a possible temporary advantage over rivals in business operations. Melbourne importers are eager that Sydney importers shall be put under the same tariff obstructions as themselves; and Sydney importers are eager that they shall not. There is quite as much selfishness in much of our Melbourne enthusiasm for federation as in much of the Sydney opposition to it. As Valtour says: "Right and justice, put in the balance with interest and passion, weigh as little as bank notes against a handful of big pennies." One might say, that in this great movement, pecuniary interests are like cash, the general good of future Australians are like mere promissory notes, which may or may not be met—and, if met, this generation will not receive the proceeds. The watchfulness of many who have long fought for the cause of liberal reform seems to have been lulled to sleep by two sops—the concession of the principle of one elector one vote for the two houses, and the power to dissolve both houses on a contest between them. To this latter concession there has been now added, by the agreement of the Premiers, a provision that if there should be a joint sitting of the two houses after a double dissolution, and then renewed disagreement, an absolute majority of the total number of members of both houses shall suffice to carry the proposed law. Of course, this is an improvement, I am bound to say so, for it was I who proposed it, twice. I was beaten by a big majority in Sydney, and afterwards by a reduced majority in Melbourne. But I regard it as particularly valuable, in that, taken in conjunction with the liberalising of the amending power, it shows that public opinion is in process of ripening. With every new discussion, we are coming nearer and nearer the true goal. "But," you are told, "we are not to go on improving it for ever. The longer you deliberate, the better the scheme, no doubt; but that means that there will

be no federation in our time." Well, I quite admit that no federal scheme should be rejected on any but the gravest grounds; that we should not wait for a perfect constitution. But this makes a flexible constitution all the more important. We want to federate now, even if the scheme has many faults; and we ought to provide that the scheme shall contain within itself the means of readily adjusting itself to new conditions and of rectifying errors. Please to understand that I am not singular in pressing the importance of a flexible constitution. We need not, it is true, be guided by the judgments of outsiders as to what we are doing. But it is interesting to note a few thoughtful opinions. Dr. Burgess, in his philosophical treatise on the United States constitution, says of the amending power: "This is the most important part of a constitution. . . . . A constitution which may be imperfect and erroneous in its other parts can be easily supplemented and corrected, if only the state be truthfully organised within the constitution; but if this be not accomplished, error will accumulate until nothing short of revolution can save the life of the state." Speaking of the provision that the constitution shall be unchangeable by amendment with regard to equal representation of the states in the senate, he calls the provision: "Confused and unnatural . . . . the state, as organised in the constitution, must be the final judge of this (equal representation). No constitution is complete which undertakes to except anything from the power of the state as organised in the constitution. Such a constitution invites the reappearance of a sovereignty back of the constitution, *i.e.*, it invites revolution." Mr. Leonard Courtney, M.P. (speaking of certain evils in the system of electing the President) says: "Far the best way out of the difficulty would doubtless be to amend the constitution, but this is almost an impossible process. The dead hands of the founders of the Republic have tied up their successors in bonds, happily few in number, etc. . . . . The great danger of the United States in the future may, perhaps, lie in the difficulty of obtaining relief by constitutional means from the proved inexpediency, if not injustice, of constitutional provision." Dr. Goldwin Smith says: "The constitution of the United States is practically unchangeable. . . . . Constitutions, like every work of man, wear out; as Bacon says, 'What men do not alter for the better, Time, the Great Innovator alters for the worse;' but you might as well invoke an Avatar of Vishnu as call for an organic amendment of the American constitution. The article which gives Nevada an equal representation in the Senate with New York is practicably immutable." The *Spectator*, one of the most influential of the London weeklies, says (after the Adelaide convention): "Australia must not adopt a constitution which is

practically unalterable like that of the United States. She must not put herself into a strait waistcoat, but into any easy-fitting jacket, capable of being altered and let out as occasion may demand. The people of New South Wales are right in demanding that the various states, great and small, should not have equal representation in the senate, but one proportionate to population."

No one knows what is before us. Probabilities point to a majority in New South Wales. But what of Western Australia and Queensland? As for West Australia, I cannot help thinking that as her delegates have had so great an influence in framing the constitution, and have helped most materially to impose on it that character to which the larger populations object, it is rather unfair that we should have to send home this bill to the Imperial Parliament unless West Australia does likewise. If we had only to consult New South Wales, Tasmania, and South Australia, we should enjoy a very different constitution. But Sir John Forrest was allowed to bring his solid team of ten men to the convention to turn the scale of voting, although they had not to face the ordeal of popular election for the purpose. I have nothing but what is good to say of the West Australian delegates; but is this fair play? Why should they help to frame a constitution by which they are not to be bound? Why should delegates, directly elected by the people, have their work controlled by delegates, not so elected? A kind friend, personally unknown to me, has for some time been sending me West Australian newspapers referring to federation; and from all that I can gather it is very doubtful whether the federal bill will for many years be accepted there. For inter-colonial freetrade is regarded as destructive of their nascent industries, and as taking away too huge a slice of their revenue. As for Queensland, federation without that great and rich colony would not be Australian Federation at all.

I find that I have not, in this, my address, touched on half the problems which this bill presents. I have not had time to speak of the effect of its provisions in preventing the healthy and natural gradual subdivision of the huge areas which are called states. I have not spoken of the quota system, under which the number of members of the National House cannot be increased, even though the population increase fifty-fold, unless the states are subdivided, or the number of senators be increased for each state. I have not spoken of the admitted blunder in the framing of the clauses as to the Privy Council appeals, and I have not even referred to the judicature provisions. I have not dealt with the narrow, provincial treatment of the debts, and the railways, and the rivers, or the absurdities connected with the inter-state commission. I have not mentioned the good clauses of the

bill; for I know that we have secured those clauses, absolutely, whether this amended bill be accepted or not. They will be sure to re-appear in any scheme of federation to be put before the people of Australia. I know now that federation is assured in the near future, whether this bill becomes law or not. I have the pleasure of knowing that the delay of this past year has made the bill better; and the pleasure of knowing, also, that if circumstances should render further delay necessary, we shall have a still better bill. Time and thought are working for us. Prejudice and pedantry and provincialism are being lifted like a heavy mist by the sun; and I have hope that before long we shall see a true federation of all Australian people, not marred by distinctions of states in Australian concerns, but whole and complete like Australia itself, and to last as long as

> "round her, indivisible, the sea,
> Breaks on her single shore."

Manifesto of the Democratic Federal Union.

On the 20th June, 1899, the electors of New South Wales accepted the Commonwealth bill, as amended at the Premiers conference, by 107,420 votes to 82,741. Inasmuch as the bill had been improved at the conference, and as Victoria had accepted the bill without amendment by a huge majority, it was hopeless now to organise opposition in Victoria; and little or no active efforts were made by those who desired further amendment. But the following manifesto was issued by the Democratic Federal Union, in answer to manifestoes published by advocates of the bill in the news columns of the "Age" and the "Argus" newspapers. It was submitted to both newspapers for publication in a similar manner; but both refused it, and it had to be inserted in the "Age" as an advertisement.

Manifesto of the Democratic Federal Union.

To our Fellow Electors of Victoria.

We are asked, in 1899 as in 1898, to vote for or against a scheme of federation. The advocates of the scheme of last year were, therefore, wrong when they told us it was a question of "now or never" for federation. The great problem will press upon us until it has been solved. They were wrong, also, in saying that the bill of 1898 was the "best bill obtainable," for the bill has been made better; but it is not yet worthy of the people of Australia—it is not nearly so much improved as it would be if there were a fresh convention, elected direct by the people, now that the people have become familiar with the questions involved. For such improvements as have been obtained we are indebted to those who voted No last year. If any further improvements are in store for us, they will be due to those who vote No now.

We invite you to vote No to this bill. We do not ask you to vote No in the interests of Victoria, but in the interests of all Australia. We do not ask you to vote No in your own interests only, but in the interests of future Australians. Those Victorian electors who are not able to see anything in federation but one common defence force and the removal of intercolonial duties, and the placing of one tariff around Australia—objects most desirable in themselves—will, of course, not heed our warning. We appeal to thoughtful electors to consider how much more this bill involves; to consider that the scheme is final, irrevocable, meant to bind our children and children's children for all generations; to consider that the people of Australia cannot, without violence, escape from the bonds of the constitution when it has become law; to consider that whatever safeguards are provided must be provided now; to consider that the advantages of a common tariff and of free-trade throughout Australia can be obtained without making such permanent constitutional sacrifices, without incurring such tremendous risks, as this bill involves. We do not emulate the example of advocates of the bill in asking men to vote on one interpretation or view of the bill in Victoria, and on another in New South Wales. They have

Manifesto of the Democratic Federal Union.

To our Fellow Electors of Victoria.

We are asked, in 1899 as in 1898, to vote for or against a scheme of federation. The advocates of the scheme of last year were, therefore, wrong when they told us it was a question of "now or never" for federation. The great problem will press upon us until it has been solved. They were wrong, also, in saying that the bill of 1898 was the "best bill obtainable," for the bill has been made better; but it is not yet worthy of the people of Australia—it is not nearly so much improved as it would be if there were a fresh convention, elected direct by the people, now that the people have become familiar with the questions involved. For such improvements as have been obtained we are indebted to those who voted No last year. If any further improvements are in store for us, they will be due to those who vote No now.

We invite you to vote No to this bill. We do not ask you to vote No in the interests of Victoria, but in the interests of all Australia. We do not ask you to vote No in your own interests only, but in the interests of future Australians. Those Victorian electors who are not able to see anything in federation but one common defence force and the removal of intercolonial duties, and the placing of one tariff around Australia—objects most desirable in themselves—will, of course, not heed our warning. We appeal to thoughtful electors to consider how much more this bill involves; to consider that the scheme is final, irrevocable, meant to bind our children and children's children for all generations; to consider that the people of Australia cannot, without violence, escape from the bonds of the constitution when it has become law; to consider that whatever safeguards are provided must be provided now; to consider that the advantages of a common tariff and of free-trade throughout Australia can be obtained without making such permanent constitutional sacrifices, without incurring such tremendous risks, as this bill involves. We do not emulate the example of advocates of the bill in asking men to vote on one interpretation or view of the bill in Victoria, and on another in New South Wales. They have

told the coal miners of Gippsland that the indulgences granted in railway rates could be continued by the Victorian Government after federation; whilst the miners in Newcastle have been told that all such indulgences must cease. Here we are told that the concessions in railway rates made in Riverina with the view of drawing the trade to Sydney could be stopped; in New South Wales the electors are told the contrary. Here you are told that your manufacturers will have the free run of the New South Wales markets, without the competition of European manufacturers; in New South Wales the electors are told that, with their advantages in coal and iron deposits, they could cut out Victorian manufacturers in Victoria. In Sydney, the electors were advised to vote for the bill because the Sydney importers could "load up" their warehouses before the uniform tariff came into operation, and produce a "boom" in Sydney business. We discard all such appeals to provincial selfishness and to sectional and temporary interests.

Blunders there are—and many of them—in the bill; but we do not ask you to vote No because of mere blunders. Look to the root of the federal laws—look to the root of the federal constitution. If these roots are sound, the tree will be good; blunders can be rectified, and provision can be made for new conditions as they arise. The financial clauses are at present in a state of inconceivable muddle. Each colony gives up all its customs and excise taxes (its chief source of revenue), and retains all its debts. No one really can foresee the result, except that there is to be an unholy scramble for the surplus revenue after seven years, when state will be pitted against state, and each state will depend on the Federal Parliament for solvency, and the State Governments will be receiving outside supplies for which they will not be dependent on the State Parliaments. But look to the roots. The root of the laws is to be found in the character of the Parliament and of the executive ministry; the root of the constitution is to be found in clause 128, as to amendments of the constitution. If, having settled by agreement what matters should be treated as matters of general Australian concern, we deposit in the Australian people as a whole the power to mould the laws in these matters, and the power to mould the constitution under which laws may be made, we should be safe in entering into almost any scheme of federation; but in this most critical point the proposed scheme fails. Nothing is left so rigid in the scheme as provincialism in the Parliament—provincialism in the clause as to amendments of the constitution—except, indeed, provincialism in the clauses which obstruct the subdivision of the enormous areas which we call "colonies," and which we are to call "states" (S.S. 123-128).

Under this scheme there is to be, for ever, a "states' house," to check, to curb, the people's house. There is to be, for ever, a house—the senate—in which the selfish, provincial interests of the several colonies are to be given power as against the general interests of the Australian people—a house in which each colony, no matter how few or how many the people, is to have an equal number of members. This "equal representation" cannot be changed, even by the difficult process of amending the constitution. It has to be continued, even if there should be 20,000,000 people in an eastern colony and 200,000 in a western colony, so that one Australian may have 100 times as much political weight (for this house) as another Australian. The more populous the state in which a man lives the more opportunities he has, by friction with many minds, of acquiring intelligence, the less will be his political power! Exactly the same vicious principle is carried into the provision for amending the constitution, for there has to be a majority of "states," as well as a majority of people, for any amendment. It is possible for five out of every six, or even nineteen out of every twenty voters throughout Australia to say Yes to an amendment; and yet the amendment cannot be carried. This is the provision which, according to some advocates of the bill, "impresses upon the bill the stamp of democracy!" When four electors vote No to the bill in New South Wales for every five who vote Yes, it is "democratic" to impose on New South Wales a constitution which forbids majority rule for all time; but if five men shall vote Yes to any amendment for every one who vote No, it is "democratic" that the Noes should carry their way. Suppose the financial provisions of the constitution to be working ruin to some one colony, but to give an unfair advantage to two or three other colonies, the selfish interests of the latter colonies are invited and enabled to obstruct the general good sense and justice of the Australian people in remedying the mistake. The danger is very real, for Sir Samuel Griffith has shown how the financial provisions of the bill of 1891 would have thrown the whole burden of federation on Victoria, and that Victoria would be actually contributing money to the other colonies; and yet the convention delegates of 1891 did not foresee this result.

This vicious system of giving a separate voice to state interests as against Australian interests, is, unfortunately, just the thing which is most firmly imbedded in the constitution. "Equal representation" of the "States" cannot be changed by the federal parliament, even with the consent of a majority of the states and a majority of the people. They used to tell us that this system is a necessary part of any true federal scheme; but it is not. Now they tell us that it is a necessary concession to

the less populous states, without which such states will not come into the federation. But there is no foundation for this statement. It seems to be made by men who want now to excuse themselves for a mistake unfortunately made under a false theory of federation. The less populous colonies have never been tried with any other system. New South Wales does not want it; Queensland does not want it; Victoria does not want it. When did the people of South Australia, of West Australia, of Tasmania, ever declare that they would not accept federation except on this vicious basis? They have never been tried. The more national, the more liberal, the more democratic the constitution is made, the more do the people of Australia like it, whether they live in the more populous or in the less populous colonies. In South Australia the bill was accepted last year by a majority of about 2 to 1. This year, although the amendments tend to weaken the provincial forces, as against the national forces, the amended bill has been adopted by about 4 to 1. In Tasmania, although the opposition was pretty vigorous last year, it is this year "dead," according to Sir Edward Braddon. The people of the less populous colonies will not be slow to recognise that the system of equal representation of the states in the senate, and in the final count for amendments, is not necessary for their protection any more than it is necessary for the protection of the county of Croajingolong against the county of Bourke, and that it is fraught with danger to the peace, order, and good government of Australia. The concession of a vote to states as a check on the vote of the people as a whole ought, in truth, to be known as the Great Betrayal.

There is every reason for predicting that this "states' house" will control the finances of Australia, and thereby control the executive, make and unmake ministries. It will have equal authority with the people's house, but a stronger position, and more power. The senators are to have a longer tenure, more secure seats, greater prestige as being elected by a whole colony, instead of by districts in a colony. The senate will be enabled to pursue a policy more steadily and continuously than the other house. True, the senate is not to originate money bills; but the senate in the United States does not originate money bills, and yet it is by far the stronger house in financial matters. So it will be here; and to the stronger house in financial matters ministers will gravitate and ministries must bow. The tremendous initiating and guiding power which ministries have will be wielded by the house of the minority, the senate; and the dangerous position will arise in which one-fifth (or less) of the people of Australia, paying one-fifth (or less) of the taxes, will have three-fifths (or more) of the control of the expenditure.

Do not be misled by those who say that the provision for the double dissolution of the two houses, and the subsequent joint sitting, will enable the majority of Australians to rule, and to control ministers and their policy. Double dissolutions must be very, very rare, especially where members of both houses are paid. But, in any case, such dissolutions will be inapplicable to money bills ; for money bills will not stand delay. There is no joint sitting until after a double dissolution. The stronger house, the senate, will get its way in 99 cases out of every 100 ; and the ministry must please the stronger house, or resign.

Do not be misled by those who say that little Switzerland, with its numerous cantons, is a safe example to follow as to amendments of the constitution. We have not, in this constitution, the Swiss national initiative, under which 50,000 electors, irrespective of cantons, may demand that an amendment be submitted to the people and to the cantons. We shall not have 22 or 23 "states," in which the weight of a selfish "state" can be easily counterbalanced. We shall have—and, it is probable, must always have (sections 7, 123, 128)—only six "states," in which each state, no matter how small, will have one-sixth of the power on the final count. Nor has Switzerland such strong temptations to a struggle between the states as are afforded by the extraordinary financial clauses in the proposed Australian constitution.

To vote No means merely to vote for a little further delay, and a new convention. Do not look for a perfect bill ; but ask for a bill which shall leave the door open wide for improvement at the will of the majority of the Australian people. If this bill become law, the selfish state forces will be too securely entrenched to allow of the Australian people as a whole being made the court of final appeal. If you hope for a true referendum in the future, you must not leave the state forces in the impregnable position in which this bill places them. This bill makes an Australian referendum impossible, for ever. This bill seals up the fountains of future democratic development.

Consider who are asking you to accept this bill. Are not all those forces which have hitherto obstructed progress pushing the bill forward ? Are not those shortsighted guides in favor of it who led us into the mistakes of the "boom" period, who committed us to rash borrowing, rash railway development, rash irrigation schemes ? Our past disasters were bad, but temporary ; but the disasters arising from this bill will be permanent—will be felt more by our children than by ourselves.

Never were any people in a position to frame a national constitution with such calmness and thoroughness. We are not pressed by danger of external attack or of internal anarchy. Every delay hitherto has led to some improvement. Those

colonies which have not been greedy for federation at any price have obtained special concessions to their wants. New South Wales has secured the capital; West Australia has secured a prolongation of her intercolonial duties; Queensland has been allowed to divide herself into districts for the election of senators. What concessions have been made to Victoria, to South Australia, to Tasmania, which accepted the bill by such large majorities? Yet Victoria might reasonably have asked that the removal of her intercolonial duties should be gradual, by successive steps during five years. By the unnecessary haste of our leaders, they have invited a huckstering attitude on the part of other colonies.

The amendments to the bill have been framed by six premiers, in secret conclave. So far as regards Victoria, they were framed without any previous authority from the people, without any previous authority from, or discussion in parliament. Every effort is being made to avoid another convention, in which all the representatives would sit by popular election, and, after facing, as candidates on public platforms, questions as to their views and votes put by the electors, who are now better educated as to the problems. The people of West Australia and of Queensland have never yet been in any way consulted. Why should we submit to a constitution moulded by premiers who have not yet consulted their people?

We cannot honestly say that we expect a majority in Victoria to vote No, after the voting of last year. Whoever is determined to be on the winning side in Victoria had better vote Yes. But those who vote No will strengthen the hands of the 83,000 electors in New South Wales who work for a broader, more generous scheme of union. Nearly all the votes against the bill in New South Wales were given on the broad, national grounds on which we appeal to you. The national federalists are solid throughout Australia. Here in Victoria we have no money, no daily newspapers, little organisation. All the social and moneyed interests are against us; even the Governor and the Lieutenant-Governor have abandoned the attitude of impartial spectators, and have thrown their weight in favor of the bill. The Government favour the bill; the Opposition favour the bill. Nevertheless, we invite you to vote No, and to insist upon your leaders giving you a better bill.

The bill has not become law yet. It will not become law until it has been sent home by the resolutions of the Parliaments of each of the accepting colonies, and approved by the Imperial Parliament. It is now almost certain that Western Australia will not accept the bill. Sir John Forrest and his ministers are against it, on financial and commercial grounds. Yet Sir John Forrest and his nine fellow delegates were allowed, although no

elected by the people, to appear and vote at the convention, to hold the balance of power there, to mould the act by which we are to be bound and they are not to be bound! It was largely for the sake of inducing West Australia to accept the bill that these alleged "concessions" have been made—that we are sacrificing sound constitutional principles. If we had to consult the wishes of the other five colonies only, the bill would be very different. Remember, the game is not all over yet; there is hope yet. If the bill come to be reshaped, let Victoria be able to show that a substantial number of voters have asserted her right to insist on further improvements. Every vote No to this bill will help; every vote No will add weight to the demand for a true, national, democratic federation.

H. B. HIGGINS, President.

B. O'LOGHLEN,
W. J. LORMER,
J. B. RONALD,
} Vice-Presidents.

L. F. S. ROBINSON Hon. Sec.

The Proposed Act For Australian Federation.

"The Times" having referred to the opponents of the Commonwealth Bill as "Little Australians," the following article was written in September, 1899, for publication in England, with a view of showing that the motives of the opponents had not been fairly represented. The greater part of the article appeared in the "Contemporary Review" for April, 1900.

THE PROPOSED ACT FOR AUSTRALIAN FEDERATION.

——o——

NEVER, probably, has a term less appropriate been applied to a body of voters than that of "Little Australians," applied by the *Times* to those who opposed the Draft bill for the federation of the Australian colonies. An unhappy expression of this sort, thoughtlessly used, only exposes the ignorance and indifference so prevalent in the Mother Country with regard to the affairs of Australia, and of such other possessions of the Crown as give little or no trouble to the Imperial Government. If the course of the discussions in Australia should be more attentively examined, it will be found that the aim of the great majority of the opponents of the Bill is a closer and more complete union, than the Bill permits, of the people of Australia, sundered as they are, artificially and arbitrarily, and often merely by lines of latitude and longtitude. It is true that during the recent contest the advocates of the Bill were pleased to call their antagonists "Anti-Federalists," "enemies of union" and so forth, and to take advantage of the prejudice which confounded opposition to a particular scheme with opposition to federation. But they know better. Mr. B. R. Wise, although a strenous partisan for the Bill in New South Wales, admits the fact in his interesting and temperate article in the *National Review* for July last :—

> "From the first there have been two schools of Federal thought—the one "urging the unification for limited purposes, the other insisting on "historic, as well as theoretic grounds, that a union of States required "a recognition of the States as such."

Apart from the admitted difficulties of making the necessary financial adjustments between the colonies, and of selecting the purposes for which united action is desirable, it ought not to be hard to solve the problem of uniting the people of the Australian colonies under the Federal scheme. Federation, in any case, is limited unification; and the limits are fixed by defining the scope of the federal and the state organizations. In Australia there is no racial difficulty. The people are already one in origin, in ideals, in habits of life. The families are numerous which have members in two or more colonies. The colonies have the same form of Government, the same relative position towards the Empire. Everywhere one finds the same problems to be faced, the same lines of political cleavage. For its own internal concerns, it is intended that each colony shall keep up its separate

existence; but for Australian concerns—matters which can be better dealt with by Australia as a whole—there is a desire on all sides to have one common Australian organization. The framers of the bill have preferred to define the subjects to be entrusted to the central organization, rarher than (as in Canada) to define the subjects to be left to the states; and there seems to be no serious objection to this course, if the demarcation of subjects between the states and the federation be sound and well defined. The Commonwealth, it is agreed, is to have control of commercial relations with other countries, the tariff (customs and excise), bounties, the postal and telegraph services, defence, lighthouses, quarantine, currency, banking, insurance, bills of exchange, bankruptcy, copyright, patents, marriage and divorce, old age pensions, immigration, the influx of aliens and criminals, industrial conciliation, etc. The States are to retain the residuary subjects, and to keep up their separate parliaments to deal therewith, without any possibility of interference on the part of the Federal Parliament. Why, it is asked, should the states "as states" have any longer a voice in the making of laws on Federal concerns? Why should the states keep back part of the price of union?

None of the advocates of the bill gives a satisfactory answer to these questions. But, to use the words of Mr. Wise, they insist "on historic as well as theoretic grounds" on erecting a federal house in which to secure the recognition of the states as such, each colony shall have an equal number of members, no matter what the population is—*or may become*—and this equality of Colonies is made final and unchangeable (sec. 128). If one colony 100 years hence should have a population of 20,000,000 and another a population of 200,000, the latter is (under the bill) to have the same number of members in one co-equal house of the Federal Parliament, and is not to be deprived of this unfair advantage without its consent! The case of Manchester and Old Sarum is nothing to it. One Australian may have 100 times the political weight of another as to tariff laws, or as to bills of exchange, or as to divorce—because he lives on a different side of a degree of longitude. As I understand them, the national federalists have never insisted on any absolute arithmetical equality of voting power in the electors. They are willing, if necessary, to concede some advantages in voting power to less populous colonies, especially at the beginning. But they urge that great disproportions in population should gradually, if not at once, be reflected in the number of representatives in Parliament — that the laws and the constitution of federated Australia should fairly represent the aims, the culture, the interests, the ideals of living Australians, from generation to generation.

"On historic as well as theoretic grounds" the promoters of the bill insist on equal representation of the colonies—that is to say, unequal representation of the people—in the Senate. Their theory is wrong; their history is misapplied. They have mistaken for an essential condition of federation a device which was the result of the peculiar circumstances of the United States at the time of their union, and from which the great republic would gladly relieve itself to-day if it could. What does a lucid thinker like the late Walter Bagehot think of their theory? He says:—

> "It is said that there must be in a Federal Government some institu-
> "tion, some authority, some body possessing a veto in which the
> "separate States composing the confederation are all equal. I confess
> "this doctrine has to me no self-evidence, and it is assumed, but not
> "proved." (*English Constitution* p. 98).

They treat federation as if it were a recognised cut-and-dried algebraic formula, applicable for all time and under all circumstances. But who is the sponsor for their formula? Professor Freeman was a theorist, I presume, and he said:—

> "The State administration within its own range will be carried on as if
> "there were no such thing as a union. The federal administration
> "within its own range will be carried on as freely as if there were no
> "such thing as a separate State."

This statement of what Federation is taken to mean leaves no room for "the recognition of states as such" in federal concerns. But enough of abstract theory. The American colonies had characters far more distinct, each from each, than the Australian colonies. They had not the facilities for locomotion and intercommunication which the railways and the postal and telegraphic systems afford to Australians. The men of Georgia had little in common with the men of Massachussetts, except rebellion. The members of the Convention of 1878 found that they had to choose between anarchy and loss of independence on the one hand, and this device of equal representation in the Senate on the other; and they probably chose wisely under the circumstances. But is it not pitiable, is it not ludicrous, that with all the experience of 110 years behind us, we should solemnly adopt by choice a system which the strongest men of the American Convention adopted only under compulsion? Surely it is obvious that the lines of party struggle will not—unless as a consequence of such a system as this—follow the lines of the State boundaries. In America, the evils of the system are recognised by the publicists of to-day. It was the bulwark of the slave power, the cause of the unjust war for Texas, the pivot of the constitutional struggles which culminated in the great civil war. But for this system, the recently proposed arbitration treaty with England would

now be law. The International Commission over which the late Lord Herschell presided, found, we are told, its chief difficulty in the constitution of the Senate. As Mr. Snead Cox states the position in the July number of the *Nineteenth Century* :—

> "Every treaty for its validity requires ratification by two-thirds of the "Senate, but those who framed the Constitution can hardly have antici- "pated how it would work at the end of a hundred years. Taking the "figures of the last census, we find that ten States of the Union, with a "population of 32,106,000—half the population of the country at that "date—are represented by only one-fifth of the Senate. In fact, their "power in the Senate is equalled by another ten states having a popu- "lation of only 1,857,124. Add to them another five states with a "population of 1,875,046, and we find that fifteen states with a popula- "tion of 3,732,170 not only outweigh the ten great states which have "half the people of the whole Republic, but have power to place an "absolute veto upon any treaty. When once trade questions come "under discussion the particularist interest of each state is liable to be "affected, and men representing a mere fraction of the whole people of "the Union are in a position to frustate and wreck the most carefully "drawn international agreement."

I think it will be recognised that men who object to this equal representation of the colonies in the Senate, who see danger in this invitation to (what Mr. Cox calls) "particularist interests" to assert themselves as against the interests of Australians as a whole, cannot fairly be called "Little Australians." But what such men principally object to is the permanency, the immutability of this vicious system. The constitution, as it appears by its preamble, is based on an agreement of the people of the various colonies, who have "agreed to unite in one *indissoluble* Federal Constitution . . . . . *under the constitution hereby established*" ; and under that Constitution no amendment of this system is to be made, by any device, without the consent of the colony whose representation it is proposed to reduce from equality. It is difficult to get people who have been trained in the traditions of the British Constitution to realize what it means to have a rigid written constitution. They know it well, to their cost, in the United States. For instance, it is clear that if the Constitution could have been amended by the will of the great majority of the people of the United States, there would have been no civil war. Certain amendments of the Constitution were proposed before the war, amendments any of which would have been accepted by the great body of moderate men of all parties as a compromise, and which would have peacefully led to the speedy extinction of the curse of slavery; but it was seen that the amendments could not be carried. The "particularist interests" interfered. In Great Britain every law is experimental. The people, by returning a sufficient number of members to the House of Commons, pledged to any given pro-

posal can always carry it—ultimately, if not immediately. The same machinery is necessary for carrying a tithe Act or a vaccination Act, as for carrying an Act to abolish the House of Lords, or for fixing the duration of Parliaments at one or at fifty years. The people through the House of Commons are sovereign, the sovereignty is not committed to a piece of parchment. Those trained to the British system do not realize what an advantage, what a check on violent movements it is, not to be bound by a written fundamental law which cannot be changed, or if changeable, can only be changed under very exceptional conditions. In an article in the *Forum* for June 1899, a thoughtful writer, Mr. Conant, says, speaking of the United States Constitution : "The Constitution like other human instruments should be amended. This has been the secret of the British Constitution. It has not been a set of rigid formulas inscribed upon mouldering parchment. The Constitution has kept pace with the steady upward march of the British people." In the *Times* (21st June, 1899), it is complacently stated among sonorous periods : " The Commonwealth will be established, and the imperfections of the Constitution will be amended in the light of experience." Similarly, His Excellency, Lord Brassey Governor of Victoria, treats British experience and principles as being necessarily applicable to all Constitutions. At a speech made in Melbourne, in the early part of this year, His Excellency said as follows :—

> " Where the Federation scheme is found to work to the disadvantage,
> " and contrary to the expectations and intentions of those who framed it,
> " such amendments will doubtless be proposed as are seen to be desirable.
> " Of this power of adaptation, a free people can never deprive themselves.
> " Having this power, you may look forward to the experimental stage
> " on which you are about to enter without a shade of anxiety or appre-
> " hension."

The experimental stage! To whom is this constitution an experiment? Perhaps to onlookers, but not to the Australian people. So far as they are concerned it is meant to be final, indissoluble; and unless within the four corners of the Constitution sufficient provision is made for the great body of the Australian people to change its provisions, it is to remain unchanged. Nothing, nothing, nothing should be excepted from the power of the people as organised within the Constitution.

But there is something else withdrawn from the power of the people in the same way. It is the power to subdivide the huge areas which we call colonies, and which we are to call States. For no amendment can be carried altering the limits of a State without the consent of that State (Secs. 123, 128). Anyone who glances at a map of Australia, and sees how small a portion of it is as yet effectively settled, will admit that greater

sub-division for the purposes of local government and local development is our proper and healthy destiny. But the Federal Parliament and the federated people are forbidden to subdivide. All the members of the Federal Parliament, and all the people of the other colonies, and all the people of Central and Northern Queensland may hereafter see the necessity for dividing Queensland into three or more separate colonies; but the subdivision cannot be carried out (should this bill become law) without the consent of the older and more populous settlements in Southern Queensland. Victoria could not have been separated from New South Wales if the people of Port Phillip had to wait for the consent of the Sydney parliament and of the New South Wales people. In view of the solemn nature of the agreement on which the proposed constitution is to be based, it would be utterly unconstitutional for the Imperial Parliament to interfere after it has once sanctioned the bill. Southern Queensland, of course, objects to have the wealthy districts of the North and Centre separated from the South ; and the bill ties these districts more firmly than ever to the South. It is the rigidity of the constitution in this respect which most influenced men in Central Queensland to vote against the bill on the 2nd September. There are other practical difficulties, also created by the constitution, in the way of subdivision. Under Sec. 121 if any new State is to be admitted into the Commonwealth, the Federal Parliament has to settle the terms, "including the extent of representation in either House of the Parliament" Is each subdivision of Queensland to have six senators ? This will mean 18 senators for Queensland, as against six for New South Wales, although New South Wales is a more populous colony; and New South Wales will object. Is Queensland to have six senators distributed between her three divisions ? Then South Queensland will object, her population being even now twice as great as Tasmania, with six senators, or West Australia, with six senators; and the disparity in population will grow with the years. How this rigidity of the Constitution as to State boundaries and as to representation in the Senate cramps the wholesome development of Australia at every point! If we could have forty-five States, as the American Union has, the evil would not be so marked. For a small State, with its particularist interest, would then only count for one forty-fifth ; with us it will count for one-sixth ; and it will be able often to hold the balance of power, and to pursue a policy of selfish bargaining for concessions in the provincial interest. Unfortunately, the Constitution by all its provisions fosters the provincial forces as against the national forces. Take the ratio between the members of the provincial House (the Senate) and the national House (the House of Representatives). It is

one half (Sec. 24). In the United States it is about one-fifth, and will become less as population increases. In Canada it is about one-third; and there the Senate is not based upon equal representation. In the United States they began with one member of the House for every 30,000 inhabitants; in Australia we begin with one member of the House for every 53,000 inhabitants. And in Australia we shall never be able to increase the number of members of the national House, no matter how much the population increases, unless we either increase the number of senators in the same ratio, or increase the number of States (see 24). I have already pointed out the difficulties placed in the way of increasing the number of States.

But is the constitution flexible as to ordinary amendments of the constitution? Let us see. In this respect there has been an improvement made by the premiers at their sitting in Melbourne early this year. Last year, as the bill stood after the convention had passed it, no amendment of the constitution, however insignificant, could be carried without (a) the consent of an absolute majority of each House, (b) the consent of the majority of the States, and (c) the consent of a majority of the people on a referendum. Should the provincial House (the Senate) fail to shew an absolute majority in favour of the alteration, nothing further can be done. The Senate was impregnable. No dissolution of Parliament, no joint sitting, no referendum could shake its power to reject. But the pressure of the arguments of the labour and radical parties, especially in New South Wales, was so much felt, that the Premiers—none of whom had ever shown any proper appreciation of elasticity in the Constitution—were forced to devise something. So they agreed that a proposed amendment, if passed twice in one House by an absolute majority, and rejected twice by the other House, may be referred to the States and the people; and if a majority of the States, as well as a majority of the persons voting, approve of the amendment, it is to become law. Of course, it does not become law if it affect the matters to which I have alluded—equal representation in the Senate or the sub-division of a State. But as to ordinary amendments, the Premiers' proposal enables the national House, acting (as is to be presumed) in the general interests of Australia as a whole, to get rid eventually of one of the provincial obstructions—such obstructions as the Senate can create. This is a gain, which, so far as it goes, is to be placed to the credit of those who, in order to secure a better Bill for Australia, voted against the bill in 1898. Had we accepted the advice of those who cried for federation at any price, this gain could not have been secured. But even with this alteration in the amending power, a due degree of flexibility is not secured. It is a "toss-up" whether the vast majority of Australian

voters can, in any given instance, carry their way. It is possible, (though this extreme instance, of course, is not likely to occur) that all the voters in the three most populous colonies, and half of the voters in the three least populous, should vote Yes to the amendment; and yet the amendment could not be carried. We should not have secured a majority of the States as well as a majority of the people. The votes might be five to one for the amendment; but the amendment would fail. It is the same radical flaw as before—the vice of looking for the consent of the states as well as for the consent of the Australian people in matters of Australian concern—the fault of insisting on "the recognition of the states as such" to use the words of Mr. Wise again.

By the way, I see that Mr. Wise has not yet grasped the proposal which the Legislative Assembly of New South Wales made as regards the amending power. He points out, justly, that a mass Australian referendum might—if unlimited in scope—enable the national forces gradually to absorb all the remaining functions of the separate states; and he says that this is "inconsistent with the preservation of that separate existence of the states which was one of the terms of the federal compact." But the real proposal was to confine the operation of the mass referendum to admitted Australian concerns—to prevent it from operating so as to take over from any state any concern which that state did not consent to surrender, to throw into the common pool. The true limits of the federal area is found in the subjects selected to be taken from the states and entrusted to the Federal Parliament. Within those limits, it is contended by national federalists that the will of the majority of the Australian people should prevail.

It will be obvious that these objections, going as they do to the root of the laws and to the root of the constitution of United Australia, transcend immensely in ultimate importance any objections to the immediate financial or commercial arrangements contained in the constitution. If the constitution were made flexible, capable of being moulded at the will and in the interests of the masses of Australians, if the legislators were amenable to the will of those masses, mistakes could soon be corrected, novel conditions could be met as they arise. But, grave as are the objections, it must be admitted that they apply more to the distant than to the immediate future, more to other generations than to the present; and they are not likely to appeal to the average "man in the street." He is always more concerned with the tug and strain of every-day life, the prospects of work and wages and trade and prices, meat, shelter, clothing and amusements. But, to my amazement, these objections were soon apprehended and appreciated, especially by the labouring

masses. The present writer, although a Victorian by residence, in last May and June addressed meetings, by invitation, in various parts of New South Wales; and everywhere he found the keenest attention paid to these constitutional flaws. "Speak to us," they said, "about the constitution. We know we shall have to pay more taxation here. We know that the financial clauses are bad, that the arrangements about rivers and railways and debts are unsatisfactory. But if we can only see that our children are to have a safe constitution to live under, we will vote for the bill for the sake of union. We don't care about the site of the federal capital. The constitutional points are the points that affect the votes." But, of course, there are many in every country who do not attend political meetings, many who do not trouble themselves about constitutions, many who are captivated by the mere name of union, many who are content to take the advice of their political leaders; and the leaders of public opinion combined to recommend the acceptance of the bill; ministry and opposition united and fraternized on platforms in favour of the bill. The Premiers said it was safe; and what could a busy man, who minds his own business, do but accept their statement? In New South Wales and in Queensland, however, the opponents of the bill had a great daily metropolitan newspaper boldly and every day declaring its defects: in Victoria they had none. Never was the power of the press in Australia so clearly demonstrated as in the result of the late voting.

But what answer have the advocates of the bill to the constitutional defects to which I have referred? They told the people that the ministry of the Commonwealth would be dependent on the national House, just as the English ministry is dependent on the House of Commons. They said that the national House had the money power. They said also that there was a provision for a joint dissolution of the two houses after continued disagreement, and then for a joint sitting at which the national House would have more members than the senate, and at which an absolute majority of the members of the two houses is to prevail.

To show that I am not doing injustice to the advocates of the bill in stating their arguments as to the money powers, I shall give some quotations.

> "It (the House of Representatives) would be the house that "shaped every line of the tariff, that shaped every item on the annual "appropriation bill, that would hold the ministry in the hollow of its "hand, and would control the executive power of the Commonwealth "from day to day. If the senate passed a vote of censure, nobody would "be the worse. If the House of Representatives passed a vote of censure "the ministry would be destroyed, and would have to apply to the people "to decide." (Mr. Reid, Premier of New South Wales, at Bathurst, "June, 1899.)

"The House of Representatives . . . . is made the dominant "partner in legislation in many ways, but chiefly by the operation of the "principle of responsible government, which will make the power of the "states depend upon the pleasure of the people." (*Sydney Morning "Herald*, June 6th, 1899).

"The power of executive government would rest with the popular "chamber, the ministry being directly amenable to the will of the "people. (Mr. Deakin.)

"There was to be equal representation in the states' chamber; but "it would not be forgotten that the ministry of the day would only be "responsible to the House of Representatives elected upon the basis of "population. Though the senate might reject measures, it could not "turn the government off the Treasury benches." (Chief Secretary of "Victoria, *Geelong Advertiser*, July, 1899.)

These quotations put crudely, but clearly, the view which was confidently proclaimed throughout New South Wales and Victoria. But, of course, anyone who reads the conditions prescribed by the bill, and has any acquaintance with constitutional practice, will see that there is no real foundation for this view; that, to say the least—there is no sufficient ground for the bold assertion that the national house is to be the dominant house. It is true that appropriation bills and taxation bills are to originate in the House of Representatives. But the senate may *at any stage* request amendment of such bills; and, if the request be not complied with, can reject the bill (sec. 53). A Governor's message, recommending an appropriation, can be sent to either house (sec. 56). In all other respects the senate is to have equal power with the other house (sec. 53). Consider that a senator is to hold office for six years (sec. 7), a member of the house for only 3 years (sec. 28); that the house can be dissolved singly, but the senate cannot (sec. 28); that the senators retire in rotation, while the members of the house retire *en bloc* (secs. 13, 28); that a senator can boast that he represents a whole state (sec. 7), while a member of the house represents only a district in a state (sec. 29); that the senator is elected by the suffrages of all the voters of his state who choose to vote, and that no voter can vote more than once (sec. 8, sec. 30); and it will be apparent that there is no foundation for the complacent belief that the national house is alone to control ministers, or that the senate "cannot turn a government off the treasury benches." The experiment of two co-equal houses has never been tried in conjunction with the peculiar British system of responsible government. One of the two houses must ultimately prove to be the stronger; and the probabilities are all in favour of the senate, with its firmer seat for members, its smaller number, and its superior opportunities for pursuing steadily a consistent policy. In the United States, all taxation bills, all appropriation bills, originate in the House

of Representatives; and yet the senate is the stronger house in regard to money bills. Mr. Ford, in his "Rise and growth of American politics" (1898) shows how Madison urged in favour of the acceptance of the constitution that the House of Representatives would have the control of the purse. But, as he says, "its highest prerogative, control of supplies, has been relinquished." The senate "loads up the appropriations." As senator Hoar admits, the power of originating money bills has become "incredible as it may appear, a cause of inferiority and of diminished influence in financial matters." If the United States had responsible government, the principal ministers would be found in the senate. The great party leaders, such as Webster, Clay, Calhoun were senators. Now, if the Australian Commonwealth start with six original states, less than one third of the people will at once have two-thirds of the control—through the senate—of the taxation and the expenditure. South Australia, Tasmania, and West Australia together will have, even at the beginning, about one half as many people as New South Wales, and will certainly not contribute more than half as much taxation. But they will have three times as much control over the expenditure as New South Wales in the senate. What a position to face!

"But," we are told, "there is a provision for a double dissolution when the two houses fixedly disagree, and then a joint sitting, at which an absolute majority of the total number of members will carry its way, if they still disagree." This section 57 seems to have a soothing effect on some academical politicians; but practical men see how ineffective it will be to meet the dangerous position to which I have referred. Money bills certainly will not stand the delay which this cumbrous clause involves. Occasionally it may be of use as to a piece of general legislation which justifies the expense and risk and delay of a double dissolution. But in 99 cases out of 100, if the senators insist on "loading the appropriations" in favour of their colonies, the senate must prevail. It is unnecessary for me to show the possibilities of a considerable majority being baulked by a minority even at a joint sitting; it is enough to show that this section is not applicable to money bills; and whichever house controls the money bills, controls the ministries. Even as regards general legislation, double dissolutions must become very rare where the members of both houses are paid (sec. 48), and when the constituencies are so wide as to make contests very expensive.

I do not deny that financial and commercial considerations led many men in each colony to look with misgiving on federation, just as they led others—and a far greater number—to work for federation at any price and under any scheme.

In Victoria, a rich apple-grower told me that he would rather not have federation because the Tasmanian apples would swamp his market. In New South Wales, where the great revenue from the sale and leasing of Crown lands has enabled Parliament to dispense with such heavy customs taxation as has been found necessary in the other colonies, many did not like the prospect of increased taxation which a customs' union with the other colonies involved. The importing interests did not look with favour on the prospect of a protective tariff being applied to New South Wales. In Queensland and in the minor colonies it was said that the local manufacturers could not compete with the Victorian manufacturers until their factories have had protection for as long a time as Victorian factories. But, to their credit be it said, such considerations did not influence the great majority of the men who voted against the bill. Every one admitted that union ought to come, even though it should involve a loss or a temporary loss to his particular interest. But the constitutional objections became more forcible in view of the financial provisions of the bill. For five years after the uniform tariff has been imposed, each colony is to get back the customs and excise duties collected in it, after deduction of its share (calculated per capita) of the federal expenditure (secs. 89, 93). But what is to happen after the five years? The Federal Parliament is to provide *on such basis as it deems fair* for the distribution among the states of the surplus revenue collected by the Federal Parliament (sec. 94). It is at this point that a great struggle must begin, and be perpetually renewed. Each state must fight for its own hand; and combinations of states against states, log-rolling, a general and unholy scramble, are invited and may be expected. If New South Wales could be made to feel that her great present and prospective population would have due representation in both houses of the Federal Parliament, and in the moulding of the constitution, I am convinced that her fears of injustice would be allayed, and that the 83,000 who voted No to the bill would have been reduced to 10,000 or 20,000. As matters stand four men are being dragged reluctantly into this federal compact for every five who are willing to submit to it. How blind our leaders have been! They have endangered the cause of union by making dangerous concessions, in the supposed interests of the less populous colonies. These colonies have not demanded these concessions. They have accepted the concessions, when offered, as was to be expected; but they have never been even asked to accept a constitution on the sounder basis recommended by experience and by principles of safe government. New South Wales did not approve of the system of the states' house, or of a states' vote or the final count for amendments. Victoria did not want it; Queensland did not want

it. It was one of the matters to which objection was most prominently taken in the manifesto of the anti-bill leagues in New South Wales, in Victoria, and in Queensland. As for South Australia, it is significant that in 1898 the voting for the bill was about 2 to 1; whereas in 1899, when the Premiers' amendments had to some extent weakened what Mr. Wise calls "the recognition of states as such" in federal matters, the voting was about 4 to 1. In Tasmania, the voting was about 4 to 1 in 1898; in 1899 it was 17 to 1, the highest proportion in the whole group. Some of the labour leaders in South Australia have told me that they see no necessity for a states' house at all, and yet it was to protect such colonies as South Australia that the senate was so constituted. What will amaze those people who in future times look into the history of this Australian movement is the pedantry which assumed that the "concessions" which peculiar circumstances rendered necessary in the United States had to be made in the constitution of Australia. The objections which were most strongly urged against the acceptance of the United States constitution were provincialist objections—that the separate states were being obliterated. The objections which are most strongly urged, and by the most people, against the Australian constitution come from the other quarter. Most of the objectors here say that the constitution is too provincial—that the states, as states, should not have a separate voice in matters which we agree to raise out of the provincial into the national arena.

It is a matter for deep regret that the candidates for election to the convention committed themselves to the American system as a system necessary for federation; that they did not clearly see, until it was too late, what was accidental and what was necessary in that system; and that they did not at least try whether the people of the minor colonies would not accept a scheme based on the simple and well settled principles which conduce to peace, order, and good government.

I have already urged that nothing should be excepted from the power of the people as organised within the constitution. There are two other, and, to my mind, very weighty arguments in support of this view. One applies to the United States as well as to Australia; the other does not. I refer (1) to the power of the federal High Court; and (2) to the absence in Australia of any presidential or other veto on the bills passed by the legislature. The federal High Court can declare an act of the federal parliament, or of any state parliament, void, as being in excess of its powers. No matter how desirable the act passed may be, the High Court is under an absolute duty to declare it void, to refuse to give effect to it, if it transgress the constitution; and there is no remedy. In England, parliament is omnipotent. No court can treat any act as void. In America,

and in Australia, Parliament (and the people) are kept within the prison walls of the constitution; and the High Court keeps the key. Parliament cannot change the constitution after the judges have declared its interpretation. Since about 1803, there have been only three changes of the constitution of the United States; and all three were the result of the civil war. In France, they have a fundamental law of the constitution. But if the legislature has passed a law, no court can declare it void. So it is in Switzerland; and in these countries, therefore, the oppression of a written, fixed constitution is not so keenly felt as in America. As for the presidential veto in the United States, Mr. Ford, in his valuable book to which I have referred already, happily compares it with the veto of the people's tribune in ancient Rome. The president and his executive cabinet are outside the legislature; the president is, substantially, elected by the masses of the people; and he uses his veto power more freely than any constitutional monarch. That veto is exercised in the interests of the bulk of the people against the encroachments of the oligarchic senate. Mr. Ford looks forward to the extension of the president's executive authority as the only practical method, within the constitution, of advancing popular rule. We shall not have, under this bill for Australia, any prospect of such relief. The executive will be in parliament, responsible to parliament, subservient to the more powerful house of parliament. When the senate in the United States compels, as it often does compel, the other chamber to adopt a measure which the senate desires in the "particularist" interest, the president can step in and say "I forbid." There will be no such protection under the Australian constitution. The Governor General must follow the advice of his responsible advisers; and his responsible advisers will be, practically, a committee of the senate resting on the approval of the senate. I do not think that I have overstated the danger.

To outside observers it must appear curious that the bill has been carried in Victoria by a far larger majority than in New South Wales. It is certainly not because the people of New South Wales are less fraternal in sentiment. The extraordinary disproportion is attributable chiefly to the attitude of the press, but also to an organised society, which certainly deserves great credit for keeping the ideal of federation before the public. I refer to the Australian Natives' Association of Victoria. No one who is not familiar with Australia can realise the power of the metropolitan press in a country in which the metropolis contains one third or more of the population. The opponents of the bill in Victoria had not a single daily paper to support them. In New South Wales, they had on their side the *Daily Telegraph*, the newspaper which has the largest circulation there. In

Victoria, there were no men of money among the opponents of the bill. The importing classes looked forward to New South Wales importers being put under the same tariff restrictions as themselves, under the federation. The manufacturing classes expected to exploit the markets of New South Wales, protected against the formidable competition of English and European goods. In New South Wales, on the other hand, the national federalists had the assistance of the purses of many of the importing and propertied classes. The generous impulse for "Australian union"—one people one destiny—led the Australian Natives' Association in Victoria at their annual meeting in 1898 to pledge their members to support the bill and work for it, even before the bill had been completed by the convention. The leading newspaper of Victoria, the *Age*, failed to take the bold stand of the Sydney *Daily Telegraph*; and though recognising some of the dangers of the bill, advised its readers to vote Yes. The clergy in Victoria gave sermons on "Union;" they offered their schools and their churches to advocates of the bill to speak in, even on Sundays; and when the other side asked for a similar favour, refused it. The opponents of the bill were jeered at as "Anti-Federalists," "Antagonists of Union." Their arguments were distorted and misrepresented; arguments which they had not used were attributed to them, and, of course, easily refuted. The opposition to the bill came only from the poor and uninfluential. The points which they urged were dry, constitutional points; the evil effects seemed remote; the immediate benefits of federation were obvious. Many men could not be brought to see anything in federation except the abolition of intercolonial tariffs, and one tariff for Australia. Looking back, it is to me wonderful that, in face of all their difficulties, the opposition scored so many as 22,000 against 100,000. The greatest number of votes against the bill was found where working men were strongest in numbers. There was a second poll this year—July 27. In the meantime, the bill had been amended by the premiers, in the direction suggested by the great body of dissentients in New South Wales. The bill has been made to some extent more flexible as to the amending power; and the provision that a three-fifths majority should carry measures at a joint sitting had given way to a provision that an absolute majority should be able to carry it. These changes were, from a democratic point of view, regarded as improvements. But above all, in the meantime, in June, 1899, the electors of New South Wales had declared by 107,000 votes to 83,000 that they would accept the amended bill. Unless New South Wales stood out for a better bill, Victoria could not. Plausible appeals were made to drop a useless opposition. The Democratic Federal Union of Victoria, which had opposed the

original measure, declared that though they still disapproved of the bill even with the amendments, a campaign against it would be useless. The advocates of the bill beat the drums for a big vote; but they feared "apathy." So the organising secretary of the Australasian Federation League came to the Victorian premier and suggested that a gay picture card should be issued to all who should vote at the referendum, as a memento of the victory of "Federation." The picture card was to contain portraits, beautifully enwreathed, of the premiers of those colonies *which accepted the bill*, and a certificate that So-and-So voted at the federation poll. The Premier—the government being all in favour of the bill—accepted this suggestion, and promised to have a picture card suitably designed and prepared at the people's expense and distributed. This promise was blazoned about in all the newspapers, proclaimed at all the numerous meetings throughout the colony. The *Argus*, in particular, appealed to the electors to come and vote and thereby win the "Certificate of merit." The law as to bribery at elections is, as to this matter, the same in Victoria as in England (17 and 18 Vict. C 102 S 3); but the usual penalty—the loss of a seat and disqualification for sitting in parliament—could not be applied where there was no candidate for election. The Democratic Federal Union wrote protesting against this unfair device; but the Premier persisted. Orators went round the country announcing that all who "did their duty at the poll," helping to "make a nation," would receive illuminated cards, "which would be handed down to the coming race as unpurchaseable." (*Age*, 24th July.) The promise of the illuminated card was a decided success. It certainly achieved the end for which it was intended. The promise was announced about a fortnight before the poll, and during that fortnight no fewer than 33,633 new electors rights were issued! As officially declared the poll was 152,653 for, 9,805 against. As the *Argus* said after the poll:—

> "The facilities for voting granted on this occasion were an "immense factor in the result, and the promised Certificate to each voter "was no small element. Many voters were under the impression that "these certificates were to be handed to them immediately their votes "were recorded, and called in at the central rooms of the league to "complain that this had not been done. They evidently overlooked the "statements in the press that certificates would be forwarded in due "course to those recording their votes. The printing alone of so large a "number must take time.'

The cards have not been issued yet, but the promise has done its work.[1]

(1) It is now publicly stated in the newspapers that the proposed expenditure for the cards was struck out of the estimates by the late Premier (who promised the cards); and that the present treasurer will not allow the expenditure!

Time—and your space—forbid me to do more than to shew what may be called the immovable defects of the constitution, and the mistake made in classing the opponents of this bill as "little Australians." Many of those who see most clearly the blunders and crudities and provincialism of the clauses relating to finance, to the railways, to trade and commerce, to the inter-state commission, to the rivers, to the federal courts, would be glad to vote for the constitution as a whole, if they saw a way fairly open for public opinion to produce such changes as may appear necessary in the interests of the masses of Australians. It would be interesting to trace the history of this movement. An English constitutional reader would find much attractive material. He would find the remarkable report of the committee of the Privy Council, 1st May, 1849, in favor of "creating some authority competent to act for these colonies jointly." This committee did not dream of "the recognition of states as such" by means of a house in which each colony should have an equal voice. They proposed one house—a house of delegates—to which each colony should contribute members in numbers roughly proportioned to population;[2] and they proposed that that house (with the Governor-General) should have power to alter its numbers or to alter its constitution, with the consent of Her Majesty. But a curious memorial was presented in 1857 to the Secretary of State for the Colonies, Mr. H. Labouchere, requesting a permissive act enabling the colonies to form a convention, with power to create a federal assembly. It was presented by some colonists in London, calling themselves the "general association for the Australian colonies;" and it boldly stated that the "principle of equality (of representation) is quite as indispensable to the fair representation of the colony in a federal assemblage as it is to the fair representation of the several States of America in the senate of that country." Mr. Labouchere in his reply declined to propose such a bill. He referred specifically to this principle of equality of representation. He said "without entering into all the objections to which it appears to him exposed, it may be sufficient to say that he can not think it at all probable that the several colonies would consent to entrust such large powers to an assembly thus constituted, or to be bound by laws imposing taxation (such as is involved, for instance, in tariff arrangements), or in the appropriation of money, which is involved in several of the subjects of legislation suggested by the memorialists; and *even if they were to consent in the first instance in the establishment of such a system, the further result would, in his opinion, very probably be dissention and discontent.* He does not,

(2) "Each colony to send two members, and each to send one additional member for every 15,000 of the population, according to the latest census before the convening of the house."

therefore, think that Her Majesty's Government ought to introduce a measure of this character, although merely permissive in its provisions, *unless they are convinced that there is a reasonable prospect of its working in a satisfactory manner.* Mr. Labouchere would not consider himself warranted in making such a proposal *unless he was both himself satisfied that it was founded on just and constitutional principles, and also that there was reason to believe that it was likely to be acceptable to the colonies which were concerned in it.*"

The italics are mine: the signature is Mr. Herman Merivale's; the sturdy good sense is, it is to be presumed, Mr. Labouchere's. He saw that the Australian colonists of 1857 were not the only persons whose opinions were to be consulted; that his duty was to safeguard the liberties of the future population as well as to comply with the reasonable wishes of the then existing population of Australia.

I am afraid that Mr. Wise is not quite correct in saying that "*from the first* there have been two schools of federal thought." The discussions of 1890, of 1891, of 1897, show that until the meeting in Adelaide the leaders of public thought in Australia assumed that the American system and no other was "true federation." When the error was pointed out, it was too late. They had committed themselves to that system, and they began to excuse themselves by asserting that without such a system the colonies would not agree to federation. This assertion I dispute. The experiment has never been tried. The colonies have not had the choice of any other system.

HENRY BOURNES HIGGINS.

Copy of Federal Constitution under the Crown, as finally adopted by the Australasian Federal Convention, at Melbourne, in the Colony of Victoria, on the 16th March, 1898, showing amendments of the constitution agreed to at a conference of the Prime Ministers of Victoria, New South Wales, Queensland, South Australia, Tasmania, and Western Australia, which sat at Melbourne on the 28th, 30th, and 31st January, and the 1st, 2nd, and 3rd February, 1899.

(ALTERATIONS FROM THE ORIGINAL TEXT WHICH WERE MADE AT THE CONFERENCE ARE SHOWN BY BLACK LETTER WHEN NEW MATTER IS INTRODUCED, AND BY STRIKING THROUGH ANY OLD MATTER WHICH IS OMITTED. ALTERATIONS WHICH HAVE BEEN MADE BY THE IMPERIAL PARLIAMENT ARE INDICATED IN THE NOTES.)

[63 AND 64 VICT. C. 12.]

Draft of a Bill to Constitute the Commonwealth of Australia.

[9TH JULY, 1900.][1]

Preamble.

WHEREAS the people of [*here name the Colonies which have adopted the constitution*],[2] humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the constitution hereby established: And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:—

Short title.

I. This act may be cited as *The Commonwealth of Australia Constitution Act.*

Act to bind Crown, and extend to the Queen's Successors.

II. This act shall bind the crown, and its provisions referring to the Queen shall extend to her Majesty's Heirs and Successors in the Sovereignty of the United Kingdom.[3]

(1) Date inserted by the Imperial Parliament.

(2) "New South Wales, Victoria, South Australia, Queensland, and Tasmania" (names inserted by the Imperial Parliament.)

(3) "The provisions of this act referring to the Queen shall extend to her Majesty's Heirs and Successors in the Sovereignty of the United Kingdom." (Clause II. as altered by the Imperial Parliament.)

Proclamation of Commonwealth.

III. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this act, the people of [*here name the Colonies which have adopted the constitution*] [4] shall be united in a Federal Commonwealth under the name of "The Commonwealth of Australia." But the Queen may, at any time after the proclamation, appoint a Governor-General for the Commonwealth.

Commencement of Act.

IV. The Commonwealth shall be established, and the constitution of the Commonwealth shall take effect, on and after the day so appointed. But the parliaments of the several colonies may at any time after the passing of this act make any such laws, to come into operation on the day so appointed, as they might have made if the constitution had taken effect at the passing of this act.

Operation of the constitution and laws.

V. This act, and all laws made by The Parliament of the Commonwealth under the constitution, shall be binding on the courts, judges, and people of every state, and of every part of the Commonwealth, notwithstanding anything in the laws of any state; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

Definition.

VI. "The Commonwealth" shall mean the Commonwealth of Australia as established under this act.

["Colony" shall mean any colony or province.] [5]

"The states" shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the Northern Territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as states; and each of such parts of the Commonwealth shall be called a "state."

"Original states" shall mean such states as are parts of the Commonwealth at its establishment.

Repeal of Federal Council Act.

VII. *The Federal Council of Australasia Act* 1885 is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Any such law may be repealed as to any state by the parliament of the commonwealth, or as to any colony not being a state by the parliament thereof.

(4) "New South Wales, Victoria, South Australia, Queensland, and Tasmania, and also if her Majesty is satisfied that the people of Western Australia have agreed thereto of Western Australia." (Names as inserted by the Imperial Parliament.)

(5) The words within brackets were omitted by the Imperial Parliament.

VIII. After the passing of this act the *Colonial Boundaries Act* 1895 shall not apply to any colony which becomes a state of the commonwealth; but the commonwealth shall be taken to be a self-governing colony for the purposes of that act. Application of Colonial Boundaries Act.

IX. The constitution of the Commonwealth shall be as follows:— Constitution and its divisions.

THE CONSTITUTION.

This constitution is divided as follows:—

CHAPTER I.

THE PARLIAMENT.

PART I.—General.

1. The legislative power of the Commonwealth shall be vested in a federal parliament, which will consist of the Queen, a senate, and a house of representatives, and which is hereinafter called "The Parliament," or "the Parliament of the Commonwealth." Legislative power.

2. A Governor-General appointed by the Queen shall be her Majesty's representative in the commonwealth, and shall have and may exercise in the commonwealth during the Queen's pleasure, but subject to this constitution, such powers and functions of the Queen as her Majesty may be pleased to assign to him. Governor-General.

3. There shall be payable to the Queen out of the consolidated revenue fund of the commonwealth, for the salary of the Governor-General, an annual sum which, until the parliament otherwise provides, shall be ten thousand pounds. Salary of Governor-General.

The salary of a Governor-General shall not be altered during his continuance in office.

Provisions relating to Governor-General.

4. The provisions of this constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the government of the commonwealth; but no such person shall be entitled to receive any salary from the commonwealth in respect of any other office during his administration of the government of the commonwealth.

Sessions of Parliament.

Prorogation and dissolution.

5. The Governor-General may appoint such times for holding the sessions of the parliament as he thinks fit, and may also from time to time, by proclamation or otherwise, prorogue the parliament, and may in like manner dissolve the house of representatives.

Summoning Parliament.

After any general election the parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs.

First Session.

The parliament shall be summoned to meet not later than six months after the establishment of the commonwealth.

Yearly session of Parliament.

6. There shall be a session of the parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the parliament in one session and its first sitting in the next session.

Part II.—The Senate.

The Senate.

7. The senate shall be composed of senators for each state, directly chosen by the people of the state, voting, until the parliament otherwise provides, as one electorate.

But until the parliament of the commonwealth otherwise provides the parliament of the state of Queensland, if that state be an original state, may make laws dividing the state into divisions and determining the number of senators to be chosen for each division, and in the absence of such provision the state shall be one electorate.

Until the parliament otherwise provides there shall be six senators for each original state. The parliament may make laws increasing or diminishing the number of senators for each state, but so that equal representation of the several original states shall be maintained and that no original state shall have less than six senators.

The senators shall be chosen for a term of six years, and the names of the senators chosen for each state shall be certified by the Governor to the Governor-General.

8. The qualification of electors of senate shall be in each state that which is prescribed by this constitution, or by the parliament, as the qualification for electors of members of the house of representatives; but in the choosing of senators each elector shall vote only once.

Method of election of senators.

9. The parliament of the commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the states. Subject to any such law, the parliament of each state may make laws prescribing the method of choosing the senators for that state.

Times and places.

The parliament of a state may make laws for determining the times and places of elections of senators for the state.

Application of State laws.

10. Until the parliament otherwise provides, but subject to this constitution, the laws in force in each state, for the time being, relating to elections for the more numerous house of the parliament of the state shall, as nearly as practicable, apply to elections of senators for the state.

Failure to choose Senators.

11. The senate may proceed to the dispatch of business, notwithstanding the failure of any state to provide for its representation in the senate.

Issue of writs.

12. The Governor of any state may cause writs to be issued for elections of senators for the state. In case of the dissolution of the senate the writs shall be issued within ten days from the proclamation of such dissolution.

Rotation of senators.

13. As soon as may be after the senate first meets and after each first meeting of the senate following a dissolution thereof, the senate shall divide the senators chosen for each state into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of the third year, and the places of those of the second class at the expiration of the sixth year, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service.

The election to fill vacant places shall be made in the year at the expiration of which the places are to become vacant.

For the purposes of this section the term of service of a senator shall be taken to begin on the first day of January following the day of his election, except in the cases of the first election and of the election next after any dissolution of the senate, when it shall be taken to begin on the first day of January preceding the day of his election.

Further provision for rotation.

14. Whenever the number of senators for a state is increased or diminished, the parliament of the commonwealth may make such provision for the vacating of the places of senators for the state as it deems necessary to maintain regularity in the rotation.

Casual vacancies.

15. If the place of a senator becomes vacant before the expiration of his term of service, the houses of parliament of the state for which he was chosen shall, sitting and voting together, choose a person to hold the place until the expiration of the term, or until the election of a successor as hereinafter pro-

vided, whichever first happens. But if the houses of parliament of the state are not in session at the time when the vacancy is notified, the Governor of the state, with the advice of the executive council thereof, may appoint a person to hold the place until the expiration of fourteen days after the beginning of the next session of the parliament of the state, or until the election of a successor, whichever first happens.

At the next general election of members of the house of representatives, or at the next election of senators for the state, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

The name of any senator so chosen or appointed shall be certified by the Governor of the state to the Governor-General.

Qualifications of senator.

16. The qualifications of a senator shall be the same as those of a member of the house of representatives.

Election of president.

17. The senate shall, before proceeding to the despatch of any other business, choose a senator to be the president of the senate; and as often as the office of president becomes vacant the senate shall again choose a senator to be the president.

The president shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the senate, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of president.

18. Before or during any absence of the president, the senate may choose a senator to perform his duties in his absence.

Resignation of senator.

19. A senator may, by writing addressed to the president, or to the Governor-General if there is no president or if the president is absent from the commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence.

20. The place of a senator shall become vacant if for two consecutive months of any session of the parliament he, without the permission of the senate, fails to attend the senate.

Vacancy to be notified.

21. Whenever a vacancy happens in the senate, the president, or if there is no president or if the president is absent from the commonwealth, the Governor-General shall notify the same to the Governor of the state in the representation of which the vacancy has happened.

Quorum.

22. Until the parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the senate for the exercise of its powers.

Voting in Senate.

23. Questions arising in the senate shall be determined by a majority of votes, and each senator shall have one vote. The president shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative.

Part III.

The House of Representatives.

Constitution of House of Representatives.

24. The house of representatives shall be composed of members directly chosen by the people of the commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The number of members chosen in the several states shall be in proportion to the respective numbers of their people, and shall, until the parliament otherwise provides, be determined, whenever necessary, in the following manner :—

I. A quota shall be ascertained by dividing the number of the people of the commonwealth, as shown by the latest statistics of the commonwealth, by twice the number of the senators.

II. The number of members to be chosen in each state shall be determined by dividing the number of the people of the state, as shown by the latest statistics of the commonwealth, by the quota ; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the state.

But nothwithstanding anything in this section, five members at least shall be chosen in each original state.

Provision as to races disqualified from voting.

25. For the purposes of the last section, if by the law of any state all persons of any race are disqualified from voting at elections for the more numerous house of the parliament of the state, then, in reckoning the number of the people of the state or of the commonwealth, persons of that race resident in that state shall not be counted.

Representatives in first Parliament.

26. Notwithstanding anything in section twenty-four the number of members to be chosen in each state at the first election shall be as follows : [*To be determined according to latest statistical returns at the date of the passing of the act, and in relation to the quota referred to in previous sections.*] (6)

(6) New South Wales ... Twenty-three
Victoria ... ... Twenty
Queensland ... ... Eight
South Australia ... Six
Tasmania ... ... Five

Provided that if Western Australia is an original state the numbers shall be as follows—

New South Wales ... Twenty-six
Victoria ... ... Twenty-three
Queensland ... ... Nine
South Australia ... Seven
Western Australia ... Five
Tasmania ... ... Five

(Numbers as inserted by the Imperial Parliament).

Alteration of number of members.

27. Subject to this constitution the parliament may make laws for increasing or diminishing the number of the members of the house of representatives.

Duration of House of Representatives.

28. Every house of representatives shall continue for three years from the first meeting of the house, and no longer, but may be sooner dissolved by the Governor-General.

Electoral divisions.

29. Until the parliament of the commonwealth otherwise provides, the Parliament of any state may make laws for determining the divisions in each state for which members of the house of representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different states.

In the absence of other provision, each state shall be one electorate.

Qualification of electors.

30. Until the parliament otherwise provides, the qualification of electors of members of the house of representatives shall be in each state that which is prescribed by the law of the state as the qualification of electors of the more numerous house of the parliament of the state; but in the choosing of members each elector shall vote only once.

Application of State laws.

31. Until the parliament otherwise provides, but subject to this constitution, the laws in force in each state for the time being relating to elections for the more numerous house of the parliament of the state shall, as nearly as practicable, apply to elections in the state of members of the house of representatives.

Writs for general election.

32. The Governor-General in Council may cause writs to be issued for general elections of members of the house of representatives.

After the first general election, the writs shall be issued within ten days from the expiry of a house of representatives, or from the proclamation of a dissolution thereof.

Writs for vacancies.

33. Whenever a vacancy happens in the house of representatives, the speaker shall issue his writ for the election of a new member, or if there is no speaker, or if he is absent from the commonwealth, the Governor-General in Council may issue the writ.

Qualifications of members.

34. Until the parliament otherwise provides, the qualifications of a member of the house of representatives shall be as follows:—

1. He must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the house of representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the commonwealth as existing at the time when he is chosen:

ii. He must be a subject of the Queen, either natural-born or for at least five years naturalised under a law of the United Kingdom, or of a colony which has become or becomes a state, or of the commonwealth, or of a state.

Election of Speaker.

35. The house of representatives shall, before proceeding to the despatch of any other business, choose a member to be the speaker of the house, and as often as the office of speaker becomes vacant the house shall again choose a member to be the speaker.

The speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the house, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of Speaker.

36. Before or during any absence of the speaker, the house of representatives may choose a member to perform his duties in his absence.

Resignation of member.

37. A member may by writing addressed to the speaker, or to the Governor-General if there is no speaker or if the speaker is absent from the commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence.

38. The place of a member shall become vacant if for two consecutive months of any session of the parliament he, without the permission of the house, fails to attend the house.

Quorum.

39. Until the parliament otherwise provides, the presence of at least one-third of the whole number of the members of the house of representatives shall be necessary to constitute a meeting of the house for the exercise of its powers.

Voting in House of Representatives.

40. Questions arising in the house of representatives shall be determined by a majority of votes other than that of the speaker. The speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

Part IV.—Both Houses of The Parliament.

Right of electors of States.

41. No adult person who has or acquires a right to vote at elections for the more numerous house of the parliament of a state, shall, while the right continues, be prevented by any law of the commonwealth from voting at elections for either house of the parliament of the commonwealth.

Oath or affirmation of allegiance.

42. Every senator and every member of the house of representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule.

Schedule.

Member of one House ineligible for other.

43. A member of either house of the parliament shall be incapable of being chosen or of sitting as a member of the other house.

Disqualification.

44. Any person who—

i. Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power : or

ii. Is attained of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the commonwealth or of a state by imprisonment for one year or longer : or

iii. Is an undischarged bankrupt or insolvent : or

iv. Holds any office of profit under the crown, or any pension payable during the pleasure of the crown out of any of the revenues of the commonwealth : or

v. Has any direct or indirect pecuniary interest in any agreement with the public service of the commonwealth, otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons :

shall be incapable of being chosen or of sitting as a senator or as a member of the house of representatives.

But sub-section iv. does not apply to the office of any of the Queen's ministers of state for the commonwealth, or of any of the Queen's ministers for a state, or to the receipt of pay, half-pay, or a pension by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the commonwealth by any person whose services are not wholly employed by the commonwealth.

Vacancy on happening of disqualification.

45. If a senator or member of the house of representatives—

i. Becomes subject to any of the disabilities mentioned in the last preceding section : or

ii. Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors : or

iii. Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the commonwealth, or for services rendered in the parliament to any person or state :

his place shall thereupon become vacant.

Penalty for sitting when disqualified.

46. Until the parliament otherwise provides, any person declared by this constitution to be incapable of sitting as a senator or as a member of the house of representatives shall, for every day on which he so sits, be liable to pay the sum of One hundred pounds to any person who sues for it in any court of competent jurisdiction.

47. Until the parliament otherwise provides, any question respecting the qualification of a senator or of a member of the house of representatives, or respecting a vacancy in either house of the parliament, and any question of a disputed election to either house, shall be determined by the house in which the question arises. Disputed elections.

48. Until the parliament otherwise provides, each senator and each member of the house of representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat. Allowance to members.

49. The powers, privileges, and immunities of the senate and of the house of representatives, and of the members and the committees of each house, shall be such as are declared by the parliament, and until declared shall be those of the commons house of parliament of the United Kingdom, and of its members and committees, at the establishment of the commonwealth. Privileges, &c., of Houses.

50. Each house of the parliament may make rules and orders with respect to— Rules and orders.

i. The mode in which its powers, privileges, and immunities may be exercised and upheld:

ii. The order and conduct of its business and proceedings either separately or jointly with the other house.

Part V.—Powers of the Parliament.

51. The parliament shall, subject to this constitution, have power to make laws for the peace, order, and good government of the commonwealth, with respect to:— Legislative powers of the parliament.

i. Trade and commerce with other countries, and among the states:

ii. Taxation; but so as not to discriminate between states or parts of states:

iii. Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the commonwealth:

iv. Borrowing money on the public credit of the commonwealth:

v. Postal, telegraphic, telephonic, and other like services:

vi. The naval and military defence of the commonwealth and of the several states, and the control of the forces to execute and maintain the laws of the commonwealth:

vii. Lighthouses, lightships, beacons and buoys:

viii. Astronomical and meteorological observations:

ix. Quarantine:

x. Fisheries in Australian waters beyond territorial limits :

xi. Census and statistics :

xii. Currency, coinage, and legal tender :

xiii. Banking, other than state banking ; also state banking extending beyond the limits of the state concerned, the incorporation of banks, and the issue of paper money :

xiv. Insurance, other than state insurance ; also state insurance extending beyond the limits of the state concerned :

xv. Weights and measures :

xvi. Bills of exchange and promissory notes :

xvii. Bankruptcy and insolvency :

xviii. Copyrights, patents of inventions and designs, and trade marks :

xix. Naturalisation and aliens :

xx. Foreign corporations, and trading or financial corporations formed within the limits of the commonwealth :

xxi. Marriage :

xxii. Divorce and matrimonial causes ; and in relation thereto, parental rights, and the custody and guardianship of infants :

xxiii. Invalids and old-age pensions :

xxiv. The service and execution throughout the commonwealth of the civil and criminal process and the judgments of the courts of the states :

xxv. The recognition throughout the commonwealth of the laws, the public acts and records, and the judicial proceedings of the states :

xxvi. The people of any race, other than the aboriginal race in any state, for whom it is deemed necessary to make special laws :

xxvii. Immigration and emigration :

xxviii. The influx of criminals :

xxix. External affairs :

xxx. The relations of the commonwealth with the islands of the Pacific :

xxxi. The acquisition of property on just terms from any state or person for any purpose in respect of which the parliament has power to make laws :

xxxii. The control of railways with respect to transport for the naval and military purposes of the commonwealth :

xxxiii. The acquisition, with the consent of a state, of any railways of the state on terms arranged between the commonwealth and the state:

xxxiv. Railway construction and extension in any state with the consent of that state :

xxxv. Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state :

xxxvi. Matters in respect of which this constitution makes provision until the Parliament otherwise provides :

xxxvii. Matters referred to the parliament of the commonwealth by the parliament or parliaments of any state or states, but so that the law shall extend only to states by whose parliaments the matter is referred, or which afterwards adopt the law :

xxxviii. The exercise within the commonwealth, at the request or with the concurrence of the parliaments of all the states directly concerned, of any power which can at the establishment of this constitution be exercised only by the parliament of the United Kingdom or by the federal council of Australasia :

xxxix. Matters incidental to the execution of any power vested by this constitution in the parliament or in either house thereof, or in the government of the commonwealth, or in the federal judicature, or in any department or officer of the commonwealth.

Exclusive powers of The Parliament.

52. The parliament shall, subject to this constitution, have exclusive power to make laws for the peace, order, and good government of the commonwealth with respect to—

i. The seat of government of the commonwealth, and all places acquired by the commonwealth for public purposes :

ii. Matters relating to any department of the public service the control of which is by this constitution transferred to the executive government of the commonwealth.

iii. Other matters declared by this constitution to be within the executive power of the parliament.

Powers of the Houses in respect of legislation.

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the government.

The senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The senate may at any stage return to the house of representatives any proposed law which the senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the house of representatives may if it thinks fit make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the senate shall have equal power with the house of representatives in respect of all proposed laws.

Appropriation Bills.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the government shall deal only with such appropriation.

Tax Bills.

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Recommendation of money votes.

56. A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the house in which the proposal originated.

Disagreement between the houses.

57. If the house of representatives passes any proposed law, and the senate rejects or fails to pass it, or passes it with amendments to which the house of representatives will not agree, and if after an interval of three months the house of representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the senate, and the senate rejects or fails to pass it, or passes it with amendments to which the house of representatives will not agree, the Governor-General may dissolve the senate and the house of representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the house of representatives by effluxion of time.

If after such dissolution the house of representatives again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the senate, and the senate rejects or fails to pass it, or passes it with amendments to which the house of representatives will not agree, the Governor-General may convene a joint sitting of the members of the senate and of the house of representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the house of representatives, and upon amendments, if any, which have been made therein by one house and not agreed to by the other, and any such amendments which are affirmed by **an absolute majority of the total number of the members of the senate and house of representatives** [~~three-fifths of the members present and voting thereon~~], shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by **an absolute majority of the total number of the members of the senate and house of representatives** [~~three-fifths of the members present and voting thereon~~], it shall be taken to have been duly passed by both houses of the parliament, and shall be presented to the Governor-General for the Queen's assent.

Royal assent to Bills.

58. When a proposed law passed by both houses of the parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

Recommendations by Governor-General.

The Governor-General may return to the house in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the houses may deal with the recommendation.

Disallowance by the Queen.

59. The Queen may disallow any law within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General, by speech or message to each of the houses of the parliament, or by proclamation, shall annul the law from the day when the disallowance is so made known.

Signification of Queen's pleasure on Bill reserved.

60. A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each of the houses of the parliament, or by proclamation, that it has received the Queen's assent.

Chapter II.

The Executive Government.

Executive power.

61. The exective power of the commonwealth is vested in the Queen, and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this constitution, and of the laws of the commonwealth.

Federal Executive Council.

62. There shall be a federal executive council to advise the Governor-General in the Government of the commonwealth, and the members of the council shall be chosen and summoned by the Governor-General and sworn as executive councillors, and shall hold office during his pleasure.

Provisions referring to Governor-General.

63. The provisions of this constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the federal executive council.

Ministers of State.

64. The Governor-General may appoint officers to administer such departments of state of the commonwealth as the Governor-General in council may establish.

Such officers shall hold officer shall hold office during the pleasure of the Governor-General. They shall be members of the federal executive council, and shall be the Queen's ministers of state for the commonwealth.

Ministers to sit in Parliament.

After the first general election no minister of state shall hold office for a longer period than three months unless he is or becomes a senator or a member of the house of representatives.

Number of Ministers.

65. Until the parliament otherwise provides, the ministers of state shall not exceed seven in number, and shall hold such offices as the parliament prescribes, or, in the absence of provision as the Governor-General directs.

Salaries of Ministers.

66. There shall be payable to the Queen, out of the consolidated revenue fund of the commonwealth, for the salaries of the ministers of State, an annual sum which, until the parliament otherwise provides, shall not exceed twelve thousand pounds a year.

Appointment of civil servants.

67. Until the parliament otherwise provides, the appointment and removal of all other officers of the executive government of the commonwealth shall be vested in the Governor-General in council, unless the appointment is delegated by the Governor-General in council or by a law of the commonwealth to some other authority.

Command of naval and military forces.

68. The command in chief of the naval and military forces of the commonwealth is vested in the Governor-General as the Queen's representative.

Transfer of certain departments.

69. On a date or dates to be proclaimed by the Governor-General after the establishment of the commonwealth, the following departments of the public service in each state shall become transferred to the commonwealth :—

Posts, telegraphs, and telephones :
Naval and military defence :
Light-houses, light-ships, beacons and buoys :
Quarantine.

But the departments of customs and of excise in each state shall become transferred to the commonwealth on its establishment.

70. In respect of matters which, under this constitution, pass to the executive government of the commonwealth, all powers and functions which at the establishment of the commonwealth are vested in the Governor of a colony, or in the Governor of a colony with the advice of his executive council, or in any authority of a colony, shall vest in the Governor-General, or in the Governor-General in council, or in the authority exercising similar powers under the commonwealth, as the case requires. Certain powers of Governor to vest in Governor-General.

Chapter III.

The Judicature.

71. The judicial power of the commonwealth shall be vested in a federal supreme court, to be called the high court of Australia, and in such other federal courts as the parliament creates, and in such other courts as it invests with federal jurisdiction. The high court shall consist of a chief justice, and so many other justices, not less than two, as the parliament prescribes. Judicial power and Courts.

72. The justices of the high court and of the other courts created by the parliament: Judges' appointment, tenure, and remuneration.

i. Shall be appointed by the Governor-General in council.

ii. Shall not be removed except by the Governor-General in Council, on an address from both houses of the parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity.

iii. Shall receive such remuneration as the parliament may fix; but the remuneration shall not be diminished during their continuance in office.

73. The high court shall have jurisdiction, with such exceptions and subject to such regulations as the parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences: Appellate jurisdiction of high court.

i. Of any justice or justices exercising the original jurisdiction of the high court:

ii. Of any other federal court, or court exercising federal jurisdiction: or of the supreme court of any state, or of any other court of any state from which at the establishment of the commonwealth an appeal lies to the Queen in council:

iii. Of the inter-state commission, but as to questions of law only:

and the judgment of the high court in all such cases shall be final and conclusive.

But no exception or regulation prescribed by the parliament shall prevent the high court from hearing and determining any

appeal from the supreme court of a state in any matter in which at the establishment of the commonwealth an appeal lies from such supreme court to the Queen in council.

Until the parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in council from the supreme courts of the several states shall be applicable to appeals from them to the high court.

Appeals to Queen in council.

(7)74. ~~No appeal shall be permitted to the Queen in council in any matter involving the interpretation of this constitution or of the constitution of a state, unless the public interests of some part of her Majesty's dominions, other than the commonwealth or a state, are involved.~~

~~Except as provided in this section, this constitution shall not impair any right which the Queen may be pleased to exercise, by virtue of her royal prerogative, to grant special leave of appeal from the high court to her Majesty in council. But the parliament may make laws limiting the matters in which such leave may be asked.~~

Original jurisdiction of high court.

75. In all matters—

I. Arising under any treaty:

II. Affecting consuls, or other representatives of other countries:

III. In which the commonwealth, or a person sueing or being sued on behalf of the commonwealth, is a party:

IV. Between states, or between residents of different states, or between a state and a resident of another state:

V. In which a writ of mandamus or prohibition or an injunction is sought against an officer of the commonwealth:

the high court shall have original jurisdiction.

Additional original jurisdiction.

76. The parliament may make laws conferring original jurisdiction on the high court in any matter—

I. Arising under this constitution, or involving its interpretation:

II. Arising under any laws made by the parliament:

III. Of admiralty and maratine jurisdiction:

IV. Relating to the same subject-matter claimed under the laws of different states.

(7). 74. "No appeal shall be permitted to the Queen in council from a decision of the high court upon any question, howsoever arising, as to the limits *inter se* of the constitutional powers of the commonwealth and those of any state or states, or as to the limits *inter se* of the constitutional powers of any two or more states, unless the high court shall certify that the question is one which ought to be determined by her Majesty in council.

"The high court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to her Majesty in council on the question without further leave.

Except as provided by this section, this constitution shall not impair any right which the Queen may be pleased to exercise by virtue of her royal prerogative to grant special leave of appeal from the high court to her Majesty in council. The parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for her Majesty's pleasure." (*New clause as substituted by the Imperial Parliament.*)

77. With respect to any of the matters mentioned in the last two sections, the parliament may make laws— Power to define jurisdiction.

I. Defining the jurisdiction of any federal court other than the high court:

II. Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is vested in the courts of the states:

III. Investing any court of a state with federal jurisdiction.

78. The parliament may make laws conferring rights to proceed against the commonwealth or a state in respect of matters within the limits of the judicial power. Proceedings against commonwealth or state.

79. The federal jurisdiction of any court may be exercised by such number of judges as the parliament prescribes. Number of judges.

80. The trial on indictment of any offence against any law of the commonwealth shall be by jury, and every such trial shall be held in the state where the offence was committed, and if the offence was not committed within any state the trial shall be held at such place or places as the parliament prescribes. Trial by jury.

CHAPTER IV.

FINANCE AND TRADE.

81. All revenues or moneys raised or received by the executive government of the commonwealth shall form one consolidated revenue fund, to be appropriated for the purposes of the commonwealth in the manner and subject to the charges and liabilities imposed by this constitution. Consolidated Revenue Fund.

82. The costs, charges, and expenses incident to the collection, management, and receipt of the consolidated revenue fund shall form the first charge thereon; and the revenue of the commonwealth shall in the first instance be applied to the payment of the expenditure of the commonwealth. Expenditure charged thereon.

83. No money shall be drawn from the treasury of the commonwealth except under appropriation made by law. Money to be appropriated by law.

But until the expiration of one month after the first meeting of the parliament the Governor-General in Council may draw from the treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the commonwealth and for the holding of the first elections for the parliament.

84. When any department of the public service of a state becomes transferred to the commonwealth, all officers of the department shall become subject to the control of the executive government of the commonwealth. Transfer of officers.

Any such officer who is not retained in the service of the commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the state, be entitled

to receive from the state any pension, gratuity, or other compensation payable under the law of the state on the abolition of his office.

Any such officer who is retained in the service of the commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time, and on the pension or retiring allowance, which would be permitted by the law of the state if his service with the commonwealth were a continuation of his service with the state. Such pension or retiring allowance shall be paid to him by the commonwealth; but the state shall pay to the commonwealth a part thereof, to be calculated on the proportion which his term of service with the state bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the state at the time of the transfer.

Any officer who is, at the establishment of the commonwealth, in the public service of a state, and who is, by consent of the governor of the state with the advice of the executive council thereof, transferred to the public service of the commonwealth, shall have the same rights as if he had been an officer of a department transferred to the commonwealth and were retained in the service of the commonwealth.

Transfer of property of state.

85. When any department of the public service of a state is transferred to the commonwealth—

I. All property of the state, of any kind, used exclusively in connection with the department, shall become vested in the commonwealth; but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General in Council may declare to be necessary.

II. The commonwealth may acquire any property of the state, of any kind, used, but not exclusively used, in connection with the department; the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the state for public purposes is ascertained under the law of the state in force at the establishment of the commonwealth.

III. The commonwealth shall compensate the state for the value of any property passing to the commonwealth under this section; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the parliament.

IV. The commonwealth shall, at the date of the transfer, assume the current obligations of the state in respect of the department transferred.

86. On the establishment of the commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the executive government of the commonwealth.

87. **During a period of ten years after the establishment of the commonwealth and thereafter until the parliament otherwise provides** of the net revenue of the commonwealth from duties of customs and of excise, not more than one-fourth shall be applied annually by the commonwealth towards its expenditure.

The balance shall, in accordance with this constitution, be paid to the several states, or applied towards the payment of interest on debts of the several states taken over by the commonwealth.

Uniform duties of customs.

88. Uniform duties of customs shall be imposed within two years after the establishment of the commonwealth.

Payment to States before uniform duties.

89. Until the imposition of uniform duties of customs—

I. The commonwealth shall credit to each state the revenues collected therein by the commonwealth.

II. The commonwealth shall debit to each state—

(*a*) the expenditure therein of the commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the state to the commonwealth.

(*b*) the proportion of the state, according to the number of its people, in the other expenditure of the commonwealth.

III. The commonwealth shall pay to each state month by month the balance (if any) in favour of the state.

Exclusive power over customs, excise and bounties.

90. On the imposition of uniform duties of customs the power of the parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

On the imposition of uniform duties of customs all laws of the several states imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect; but any grant of or agreement for any such bounty lawfully made by or under the authority of the government of any state shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

Exceptions as to bounties.

91. Nothing in this constitution prohibits a state from granting any aid to or bounty on mining for gold, silver or other metals, nor from granting, with the consent of both houses of the parliament of the commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.

Trade within the commonwealth to be free.

92. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the states, whether by means of internal carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this constitution, goods imported before the imposition of uniform duties of customs into any state, or into any colony which, whilst the goods remain therein, becomes a state, shall, on thence passing into another state within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the commonwealth, less any duty paid in respect of the goods on their importation.

Payment to States for five years after uniform Tariffs.

93. During the first five years after the imposition of uniform duties of customs, and thereafter until the parliament otherwise provides :—

I. The duties of customs chargeable on goods imported into a state and afterwards passing into another state for consumption, and the duties of excise paid on goods produced or manufactured in a state and afterwards passing into another state for consumption, shall be taken to have been collected not in the former but in the latter state.

II. Subject to the last sub-section, the commonwealth shall credit revenue, debit expenditure, and pay balances to the several states as prescribed for the period preceding the imposition of uniform duties of customs.

Distribution of surplus.

94. After five years from the imposition of uniform duties of customs, the parliament may provide, on such basis as it deems fair, for the monthly payment to the several states of all surplus revenue of the commonwealth.

Customs duties of Western Australia.

95. Notwithstanding anything in this constitution, the parliament of the state of Western Australia may, during the first five years after the imposition of uniform duties of customs, impose duties of customs on goods passing into that state and not originally imported from beyond the limits of the commonwealth ; and such duties shall be collected by the commonwealth.

But any duty so imposed on any goods shall not exceed during the first of such years the duty chargeable on the goods under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth, and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth of such latter duty, and all duties imposed under this section shall cease at the expiration of the fifth year after the imposition of uniform duties.

If at any time during the five years the duty on any goods under this section is higher than the duty imposed by the

commonwealth on the importation of the like goods, then such higher duty shall be collected on the goods when imported into Western Australia from beyond the limits of the commonwealth.

Financial assistance to States.

96. During a period of ten years after the establishment of the Commonwealth and thereafter until the parliament otherwise provides, the parliament may grant financial assistance to any state on such terms and conditions as the parliament thinks fit.

Audit.

97 (~~95~~). Until the parliament otherwise provides, the laws in force in any colony which has become or becomes a state with respect to the receipt of revenue and the expenditure of money on account of the government of the colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the commonwealth in the state in the same manner as if the commonwealth, or the government or an officer of the commonwealth, were mentioned whenever the colony, or the government or an officer of the colony is mentioned.

Trade and commerce includes navigation and State railways.

98 (~~97~~). The power of the parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any state.

Commonwealth not to give preference.

99 (~~98~~). The commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one state or any part thereof over another state or any part thereof.

Nor abridge right to use water.

100 (~~99~~). The commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a state or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

Inter-state commission.

101 (~~100~~). There shall be an inter-state commission, with such powers of adjudication and administration as the parliament deems necessary for the execution and maintenance, within the commonwealth, of the provision of this constitution relating to trade and commerce, and of all laws made thereunder.

Parliament may forbid preferences by states.

102 (~~101~~). The parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any state, or by any authority constituted under a state, if such preference or discrimination is undue and unreasonable, or unjust to any state: due regard being had to the financial responsibilities incurred by any state in connection with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any state, unless so adjudged by the inter-state commission.

Commissioners' appointment, tenure, and remuneration

103 (~~102~~). The members of the inter-state commission—

I. Shall be appointed by the Governor-General in council:

II. Shall hold office for seven years, but may be removed within that time by the Governor-General in council, on an address from both houses of the parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity:

III. Shall receive such remuneration as the parliament may fix; but such remuneration shall not be diminished during their continuance in office.

Saving of certain rates.

104 (~~103~~). Nothing in this constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a state, if the rate is deemed by the inter-state commission to be necessary for the development of the territory of the state, and if the rate applies equally to goods within the state and to goods passing into the state from other states.

Taking over public debts of states.

105 (~~104~~). The parliament may take over from the states their public debts as existing at the establishment of the commonwealth, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the states shall indemnify the commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the commonwealth payable to the several states, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several states.

CHAPTER V.

THE STATES.

Saving of constitutions.

106 (~~105~~). The constitution of each state of the commonwealth shall, subject to this constitution, continue as at the establishment of the commonwealth, or as at the admission or establishment of the state, as the case may be, until altered in accordance with the constitution of the state.

Saving of powers of state parliaments.

107 (~~106~~). Every power of the parliament of a colony which has become or becomes a state, shall, unless it is by this constitution exclusively vested in the parliament of the commonwealth or withdrawn from the parliament of the state, continue as at the establishment of the commonwealth, or as at the admission or establishment of the state, as the case may be.

Saving of state laws.

108 (~~107~~). Every law in force in a colony which has become or becomes a state, and relating to any matter within the powers of the parliament of the commonwealth, shall, subject to this constitution, continue in force in the state; and, until provision is made in that behalf by the parliament of the common-

wealth, the parliament of the state shall have such powers of alteration and of repeal in respect of any such law as the parliament of the colony had until the colony became a state.

Inconsistency of laws.

109 (~~108~~). When a law of a state is inconsistent with a law of the commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Provisions referring to Governor.

110 (~~109~~). The provisions of this constitution relating to the Governor of a state extend and apply to the Governor for the time being of the state, or other chief executive officer or administrator of the government of the state.

States may surrender territory.

111 (~~110~~). The parliament of a state may surrender any part of the state to the commonwealth; and upon such surrender, and the acceptance thereof by the commonwealth, such part of the state shall become subject to the exclusive jurisdiction of the commonwealth.

States may levy charge for inspection laws.

112 (~~111~~). After uniform duties of customs have been imposed, a state may levy on imports or exports, or on goods passing into or out of the state, such charges as may be necessary for executing the inspection laws of the state; but the net produce of all charges so levied shall be for the use of the commonwealth; and any such inspection laws may be annulled by the parliament of the commonwealth.

Intoxicating liquids.

113 (~~112~~). All fermented, distilled, or other intoxicating liquids passing into any state or remaining therein for use, consumption, sale, or storage shall be subject to the laws of the state as if such liquids had been produced in the state.

States may not raise forces. Taxation of property of Commonwealth or State.

114 (~~113~~). A state shall not, without the consent of the parliament of the commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the commonwealth; nor shall the commonwealth impose any tax on property of any kind belonging to a state.

States not to coin money.

115 (~~114~~). A state shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

Commonwealth not to legislate in respect of religion.

116 (~~115~~). The commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the commonwealth.

Rights of residents in States.

117 (~~116~~). A subject of the Queen, resident in any state, shall not be subject in any other state to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other state.

Recognition of laws, &c., of States.

118 (~~117~~). Full faith and credit shall be given, throughout the commonwealth, to the laws, the public acts and records, and the judicial proceedings, of every state.

Protection of States from invasion and violence.

119 ~~(118)~~. The commonwealth shall protect every state against invasion, and, on the application of the executive government of the state, against domestic violence.

Custody of offenders against laws of the Commonwealth.

120 ~~(119)~~. Every state shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the commonwealth, and for the punishment of persons convicted of such offences, and the parliament of the commonwealth may make laws to give effect to this provision.

CHAPTER VI.

NEW STATES.

New States may be admitted or established.

121 ~~(120)~~. The parliament may admit to the commonwealth or establish new states, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either house of the parliament, as it thinks fit.

Government of territories.

122 ~~(121)~~. The parliament may make laws for the government of any territory surrendered by any state to and accepted by the commonwealth, or of any territory placed by the Queen under the authority of and accepted by the commonwealth, or otherwise acquired by the commonwealth, and may allow the representation of such territory in either house of the parliament to the extent and on the terms which it thinks fit.

New States may be admitted or established.

123 ~~(122)~~. The parliament of the commonwealth may, with the consent of the parliament of a state, **and the approval of the majority of the electors of the state voting upon the question,** increase, diminish, or otherwise alter the limits of the state, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any state affected.

Formation of new States.

124 ~~(123)~~. A new state may be formed by separation of territory from a state, but only with the consent of the parliament thereof, and a new state may be formed by the union of two or more states or parts of states, but only with the consent of the parliaments of the states affected.

CHAPTER VII.

MISCELLANEOUS.

Seat of Government.

~~(124). The seat of government of the commonwealth shall be determined by the parliament and shall be within territory vested in the commonwealth.~~

~~Until such determination the parliament shall be summoned to meet at such place within the commonwealth as a majority of~~

~~the governors of the states, or, in the event of an equal division of opinion among the governors, as the governor-general shall direct.~~

125. The seat of government of the commonwealth shall be determined by the parliament, and shall be within territory which shall have been granted to or acquired by the commonwealth, and shall be vested in and belong to the commonwealth, and [if New South Wales be an original state shall be in that state][8] and be distant not less than one hundred miles from Sydney.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of crown lands shall be granted to the commonwealth without any payment therefor.

[9] [If Victoria be an original state] the parliament shall sit at Melbourne until it meets[10] at the seat of government.

Power to Her Majesty to authorise Governor-General to appoint deputies.

126 (~~125~~). The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen ; but the appointment of such deputy or deputies shall not effect the exercise by the Governor-General himself of any power or function.

Aborigines not to be counted in reckoning population.

127 (~~126~~). In reckoning the numbers of the people of the commonwealth, or of a state or other part of the commonwealth, aboriginal natives shall not be counted.

CHAPTER VIII.

ALTERATION OF THE CONSTITUTION.

Mode of altering the constitution.

128 (~~127~~). This constitution shall not be altered except in the following manner :—

The proposed law for the alteration thereof must be passed by an absolute majority of each house of the parliament, and not less than two nor more than six months after its passage through both houses the proposed law shall be submitted in each state to the electors qualified to vote for the election of members of the house of representatives.

But if either house passes any such proposed law by an absolute majority and the other house rejects or fails

(8) "Shall be in the state of New South Wales." (Words in brackets as altered by the Imperial Parliament).

(9). Words in brackets omitted by the Imperial Parliament.

(10). "Meet" substituted for "meets" by the Imperial Parliament.

to pass it or passes it with any amendment to which the first-mentioned house will not agree, and if, after an interval of three months, the first-mentioned house, in the same or the next session, again passes the proposed law by an absolute majority, with or without any amendment which has been made or agreed to by the other house, and such other house rejects or fails to pass it with any amendment to which the first-mentioned house will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned house, and either with or without any amendments subsequently agreed to by both houses, to the electors in each state qualified to vote for the election of the house of representatives.

When a proposed law is submitted to the electors the vote shall be taken in such a manner as the parliament prescribes. But until the qualification of electors of members of the house of representatives becomes uniform throughout the commonwealth only one-half of the electors voting for and against the proposed law shall be counted in any state in which adult sufferage prevails.

And if in the majority of the states a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

~~An~~ [**No**] alteration diminishing the proportionate representation of any state in either house of the parliament, or the minimum number of representatives of a state in the house of representatives, **or increasing, diminishing, or otherwise altering the limits of the state, or in any manner affecting the provisions of the constitution in relation thereto,** shall [~~not~~] become law unless the majority of the electors voting in that state approve the proposed law.

THE SCHEDULE.

OATH.

I, A.B., do swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria, her heirs and successors according to law. So help me God!

AFFIRMATION.

I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to her Majesty Queen Victoria, her heirs and successors according to law.

(Note.—*The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time*).

Higgins, Henry Bournes
Essays and addresses on the Australian
Commonwealth Bill.